रजिस्ट्री सं० डी० 222 REGISTERED No. D. 222

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 10] नई दिल्ली, शनिवार, मार्च 6, 1971/फाल्गुन 15, 1892
No. 10] NEW DELHI, SATURDAY, MARCH 6, 1971/PHALGUNA 15, 1892

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किये गये विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 23rd February 1971

S.O. 1007.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. I), Dhanbad, in the industrial dispute between the employers in relation to the Birds' Sirka Colliery, Post Office Argada, District Hazaribagh and their workmen, which was received by the Central Government on the 15th February, 1971.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DHANBAD.

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 60 OF 1968

PARTIES:

Employers in relation to Sirka Colliery of Messrs South Karanpura Coal Co., Ltd., described in the order of reference as Birds' Sirka Colliery, P.O. Argada, District Hazaribagh.

AND

Their Workmen.

PRESENT:

Shri A. C. Sen, Presiding Officer.

APPEARANCES:

For the Employers.—Shri D. Narsingh, Advocate.

For the Workmen.—None.

STATE: Bihar. INDUSTRY: Coal.

Dhanbad, dated the 8th February 1971

AWARD

The following question mentioned in the Schedule below was referred to the Tribunal by the Government of India, Ministry of Labour, Employment and Rehabilitation, by its Order No. 2/81/68-LR. II, dated the 17th July, 1968 for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947.

SCHEDULE

"Whether the management of Birds' Sirka Colliery, Post Office Argada, District Hazaribagh of which Messrs Bird and Company are the Managing Agents was justified in dismissing Shri S. K. Chatterjee, Attendance Clerk with effect from the 23rd June, 1967. If not, to what relief is the workman entitled?".

2. It is not disputed that Shri S. K. Chatterjee, workman named in the schedule to the present order of reference died on 5th August, 1970. His cause was taken up by the workmen. The latter can represent the workman concerned only as long as he is alive. The dispute centering round him, that is to say, Shri S. K. Chatterjee, has ceased to be an industrial dispute after his death (vide Rahat Hossain and others *Vs.* Lipton Limited, Calcutta—reported in 1954 Vol. VI F.J.R. p. 337). That being the position, I record a no dispute award in this matter.

3. This is my award. Let a copy of the award be submitted to the appropriate Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) A.C. SEN,
Presiding Officer.

[No. 2/81/68-LR. II.]

S.O. 1008.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Victoria West Colliery, Post Office Dishergarh, District Burdwan and their workmen, which was received by the Central Government on the 17th February, 1971.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 62 OF 1970

PARTIES:

Employers in relation to the management of Victoria West Colliery,

AND

Their workmen

PRESENT:

Mr. B N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers.—Mr. D. Narsingh, Advocate.

On behalf of Workmen.—Mr. Pushpamoy Das Gupta, Advocate.

STATE: West Bengal. INDUSTRY: Coal Mines.

AWARD

By Order No. 6/59/70-LRII, dated November 10, 1970, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following industrial dispute between the employers

in relation to the management of Victoria West Colliery and their workmen, to this Tribunal, for adjudication, namely:—

"Whether the management of Victoria West Colliery of Messrs New Birbhum Coal Company Limited, Post Office Barakar, District Burdwan is justified in denying payment of wages for paid holidays to Sarvashri Dasarath Pasman, Moti Nunia and Amrit Pasman, Sardars? If not, to what relief are these workmen entitled and from what date?"

2. The cause of the workmen was espoused by their trade Union, named Colliery Mazdoor Congress (HMS). According to the written statement filed by the Colliery Mazdoor Congress, on behalf of the workmen, Victoria West Colliery, owned and managed by New Birbhum Coal Company Ltd., engages sardars to work and to look after the work of miners and loaders. Further, according to the said written statement, sardars are paid sardari and commission for supervision of work of loaders and miners under them and that they are workmen covered by the Industrial Disputes Act. It is contended in paragraph 3 of the said written statement, that commission and sardari paid to sardars are wages under the Payment of Wages Act. Paragraph 4 of the said written statement is set out below:

"(4) In the Coal Mining Industry there are seven paid holidays in the year as mentioned below and of these four holidays are optional at the choice of workmen concerned and in respect of three holidays there is no choice. In any case seven days paid holidays must be given to Colliery workmen.

I. *Optional Holidays*:

(i) One day Holy festival;
(ii) One day Idd;
(iii) One day for Durga Puja;
(iv) One day for Kali Puja.

II. *Compulsory Holidays*:

(i) 26th January;
(ii) 15th August;
(iii) 2nd October (Gandhiji's Birth day).***"

The grievance made on behalf of the workmen was that amongst sardars, only one sardar, named Pir Mohammad, was enjoying seven paid holidays but the three sardars, mentioned in the order of Reference, were being discriminated against and not being paid their wages for the paid holidays. In paragraph 6 of the said written statement, it is alleged that the cause of the three workmen was taken up by the Colliery Mazdoor Congress and C. N. Jha, Vice-President of the Congress, addressed a letter, dated August 10, 1970, to the Assistant Labour Commissioner for conciliation, which, however, failed. The action of the management in refusing payment of wages for paid holidays to the three workmen named in the order of Reference was condemned as arbitrary, illegal and without any justification and there was a prayer made that they be paid their wages for paid holidays since May 26, 1956, from when the Mazumdar award was implemented.

3. There was a short written statement filed on behalf of the management. In paragraphs 2 and 3 of the written statement, it was pleaded, that the reference was bad in law as it did not relate to any industrial dispute and that this tribunal should refrain from entertaining the reference on the ground of want of jurisdiction. Without prejudice to the aforesaid preliminary objection, it was pleaded, in paragraph 4(b) of the said written statement, that in paragraph 829 of the All India Industrial Tribunal (Colliery Disputes) Award seven paid festival holidays were allowed to workmen employed in the coal industry. It was further pleaded in paragraphs 4(f) ,(g), (h) and (i):

"4(f) The said award, therefore, did not apply to persons engaged in the coal industry who did not fall within the definition of 'workman'.

(g) At the relevant time, *i.e.* when the said reference was made to the said Tribunal, persons discharging supervisory duties were not 'workmen' as the expression 'workmen' was defined in section 2(s) of the Act as it then was in force.

(h) The three persons herein concerned namely, S/S Dasarath Paswan, Moti-Nunia and Amrit Paswan, were at the said relevant date not workmen as they did not themselves do any work in the mine but claimed to supervise the work done by the miners whom they had, sometime in the past, recruited for service in the colliery.

(i) The said three persons were, therefore, not entitled to claim the benefit of paid festival holidays as awarded by the said All-India Industrial

Tribunal (Colliery Disputes) for workmen employed in the Coal mines."

4. The above is a brief summary of the pleadings as it originally stood. Thereafter on the day preceding the day fixed for the hearing of the reference there was a supplementary statement, by way of rejoinder, filed on behalf of the workmen from which I need set out only paragraph 1, which I do hereinbelow:

> "Further to paragraph 6 of the written statement filed by the union, the union states that office bearers of the union made oral representation to the management of M/s. Victoria West Colliery by 1st week of Aug. 1970 to provide paid holidays to three Sardars under reference but as the management was not agreeable for granting paid holidays to three workmen under reference the union made written representation on 10th August, 1970 to the Assistant Labour Commissioner, Government of India, Ministry of Labour and Employment, Asansol."

To that rejoinder there was a reply on behalf of the management, in which it was pleaded in substance that the proposed amendment was vague, introduced by way of after-thought and was contradictory to the contentions in paragraph 6 of the original written statement.

5. In the background of these pleadings, I have to adjudicate upon the points referred to this Tribunal.

6. I need first of all dispose off the preliminary objection urged by Mr. D. Narsingh, learned Advocate appearing on behalf of the management. He submitted that an industrial dispute, within the conception of the Industrial Disputes Act, was any dispute concerning difference between employers and employers or between employers and workmen, or between workmen and workmen, which was connected with the employment or non-employment or the terms of employment or with the condition of labour, of any person. He further submitted that the question of non-payment of wages to sardars on paid holidays was never taken up by or on behalf of the workmen with the management. On the other hand, the trade union straightway took up the dispute with the Assistant Labour Commissioner. He submitted that a question which was never before the management, never disputed by the workmen, could not be an industrial dispute and was incapable of being the subject-matter of conciliation proceedings by a Conciliation Officer, in this case the Assistant Labour Commissioner. Any reference to an industrial tribunal made in this context was a bad reference, did not authorise the tribunal to adjudicate upon such a dispute. In support of his contention he relied upon an abstract from the judgment of the Supreme Court in Sindhu Resettlement Corporation Limited *Vs.* Industrial Tribunal Gujarat (1968) J. L.L.J. 834 (839):

> "It may be that the conciliation officer reported to the Government that an industrial dispute did exist relating to the reinstatement of respondent 3 and payment of wages to him from 21st February 1958, but, when the dispute came up for adjudication before the tribunal, the evidence produced clearly showed that no such dispute had ever been raised by either respondent with the management of the appellant. If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer . An industrial dispute, as defined must be a dispute between employers and employers, employers and workmen and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute. Consequently, the material before the tribunal clearly showed that no such industrial dispute, as was purported to be referred by the State Government to the tribunal, had ever existed between the appellant-Corporation and the respondents and the State Government, in making a reference, obviously committed an error in basing its opinion on material which was not relevant to the formation of opinion."

7. Mr. Pushpamoy Das Gupta, learned Advocate for the workmen, tried to repel the preliminary objection raised on behalf of the management by relying upon paragraph 1 of his supplementary statement or rejoinder, which have already set out, and also upon the evidence of two of his witnesses, namely

Chaturanand Jha, the Vice-President of Colliery Mazdoor Congress and Dasarath Paswan, one of the workmen named in the order of Reference. In his examination-in-chief Jha stated:

> "The dispute was raised on August 6, 1970. The workmen did not submit any charter of demand but verbally made this demand. The management denied the claim and then we took this dispute before the Conciliation Officer."

Dasarat Paswan stated in his examination-in-chief:

> "We do not get wages for the above mentioned holidays. Myself, Moti Nunia and Amrit Paswan, Sirdars do not get wages for the above-mentioned paid holidays but Peer Mohammad, another sardar gets his wages since 1947. Myself, Moti Nunia and Amrit Paswan verbally asked for such wages from the Manager. He stated that a dispute was pending before the High Court and nothing could be done until the High Court decision was obtained. The matter pending before the High Court is over non-payment of bonus. We then approached our trade Union."

He also relied upon Ex. 5, a letter from Superintendent Personnel to Sudhir Kumar Rudra, General Secretary, Colliery Mazdoor Congress, calling a meeting to discuss matters relating to Victoria West Colliery with union officials. The material portion from this letter is set out below:

> "A meeting has been fixed to be held in my office on 6th August, 1970 at 3.30 p.m. to discuss matters relating to Victoria West Colliery.
>
> I hope the date and time will be convenient for you to attend.
>
> Yours faithfully,
>
> Sd. Illigible
> Superintendent Personnel
> New Beerbhoom Coal Co., Ltd.

Copy to:

1. Manager, Victoria West Colliery to please attend and inform the local union officials accordingly.
2. Deputy Superintendent, Chand. I hope the date and time will suit you to attend.
3. Labour Relations Officer to please attend accordingly."

In further utilisation of Ex. 5, he recited to me the following extracts from the evidence of Chaturanand Jha:

> "(Shown letter Ex. 5). On receipt of the letter, we attended the meeting on August 6, 1970.
>
> *To Tribunal*
>
> The letter was addressed to Sudhir Kumar Rudra, General Secretary, Colliery Mazdoor Congress but we, local union officials, were apprised of the contents of the letter by the Manager, Victoria West Colliery. The matters to be discussed in the meeting were two, (1) payment of wages for paid holidays to Sirdars and (2) objections to transfer of certain miners. I know that these were the two matters for discussions because Sudhir Kumar Rudra approached the management in respect of these two matters only. Sudhir Kumar Rudra is not present today before this Tribunal to give evidence . I heard from Sudhir Kumar Rudra that he had approached the management for discussion of the abovementioned two matters. The Manager of Victoria West Colliery apprised me of the meeting by circulating his copy of the letter on which I put my signature. I myself attended the meeting on the 6th.
>
> Exam in chief:
>
> At the meeting the points were discussed but the management refused to give wages for paid holidays to Sirdars. Then the matter was taken before the Conciliation officer."

On the materials set out above, Mr. Pushpamoy Das Gupta argued that the demand had been verbally made before the management. The management fixed a date for discussion on receipt of the demand and at the meeting two points were discused, namely, transfer of certain miners and payment of wages

to sardars on paid holidays. He submitted that this was sufficient to raise an industrial dispute with the management in the instant matter.

8. Mr. Narsingh, however, depended, upon the evidence of N. C. Sharma, the manager of Victoria West Colliery, who denied in his evidence that the three workmen had at all approached him with their demand for payment of wages on paid holidays and also denied that excepting the matter of transfer of loaders and miners any other item had been discussed at the meeting convened by the Superintendent Personnel under Ex. 5. I find one weak point in the submission made by Mr. Pushpamoy Das Gupta. The letter, Ex. 5, is dated July 30, 1970 According to Chaturanand Jha the dispute over payment of wages to sardars on paid holidays was raised on August 6, 1970. By a notice issued 7 days earlier to the demand, it could not be intended to include in the notice a demand made much later on. I find, however, from Ex. 5 that the subject matter of discussion at the meeting was not one but many and that is possibly why the language used was not 'matter' in the singular but 'matters' in the plural. Being in doubt about the language, the tribunal asked for an explanation from N. C. Sharma, the manager. The only answer he could give was:

> "I cannot explain why the Superintendent Personnel used the expression 'matters' that is to say plural expression) when there was only a single item for discussion on the agenda."

It may just be, that the meeting though not originally called for the purpose of discussing the question of payment of wages to sardars on paid holidays, but was called to discuss certain other matters, that item also was discussed in the meeting amongst the miscellaneous matters. This is not an unreasonable presumption that I draw, because N .C. Sharma, the Manager himself admits that the management thinks it proper to take union leaders into confidence and if a union leader raised the question it was unlikely that the matter was not discussed at all. I am thus confronted with the cridibility of the evidence given by Chaturanand Jha and N. C. Sharma on this point and on weighing their evidence I am inclined to place greater reliance, on this point, on the evidence of Chaturanand Jha than on the evidence of N. C .Sharma, the Manager. If that be so, the dispute must be taken to have been raised before the management and discussed with them at a meeting. That is sufficient to raise an industrial dispute with the management justifying the Conciliation Officer to step for conciliation. In the view that I take, I over-rule the preliminary objection.

9. I turn now to the question on merits. I have first to deal with the question whether sardars are workmen at all. In this context I have to remind myself of certain observations contained in the Award, dated December 30, 1959, by Sri A. Das Gupta, in the Colliery Disputes Arbitration. Those observations are:

> "10. In the past the sirdars used to supply labour to the collieries. Colliery labour was migratory in the past and sirdars had to recruit labour and supply labour to the colliery and were paid a commission on the out put of their men. The Commission was related to the out put of the men of the sirdars, obviously as an inducement to the sirdars to supply hard working men. The sirdars had full control on his men and could withdraw them from collieries at their will. These men have since been absorbed as direct workmen under the collieries. Now, with the progress of the welfare activities of the colliery workers, the service conditions have become fairly attractive and there is no longer any necessity to sent out men for recruitment of labour as in the past. In the past, these sirdars supervised the work of their men because on the result of their men depended their commission.
>
> ** ** ** **
>
> 14. ***I may accordingly classify the sirdars as indicated below:
>
> 1. Working Sirdars—
>
> (a) Those who do manual work with the members of their respective gangs;
>
> (b) Those who actively supervise a gang of not less than 13 persons on an average.
>
> Supervision contemplated under this clause must be such supervision as has been imposed on the sirdars by the management and brings the sirdar under the control and discipline of the management.

2. Non-working Sirdars—

(a) Sirdars who do not work along with the other members of their respective gangs or are not required by the management to carry on any supervisory duties and are not subject to the control and discipline of the management as indicated in clause 1(b) but do some supervisory work which are self-imposed and are prompted by self-interest to increase the outputs of their respective gangs and their remuneration.

(b) Sirdars who have no activity, manual or supervisory, imposed by the management or self-imposed who may be called sleeping sirdars.

* * * * *

15. In the context of what I have said, the necessity for recruitment of labour through sirdars no longer exists, the sirdars have become superflous. The sirdars under class 2(b) or sleeping sirdars have no justification to have any increment in their rates. The sirdars under clause 2(a) who carry on self-imposed supervisory duties in their own interest have also no justification to claim any increase in their sirdari rates. It has been urged that the supervision which this class of sirdars does although self-imposed purports to benefit the collieries inasmuch as such supervision tends to increase the production. The collieries have elaborate arrangements for supervision and are not in need of any self-imposed supervision of the sirdars. It has not been pointed out by any statistics that production would have been less if there was no such supervision by these sirdars. Such self-imposed supervision proceeds from a suspicion in the minds of the sirdars that the workers will not give proper output if there is no such supervision. In my opinion this class of sirdars has no justification for any increment in their sirdari rates."

Later on, the Supreme Court also discussed the question in *Bhagaband Colliery* vs. *Their workmen*, (1962) II L.L.J., 356. The context in which the Supreme Court examined the problem need be stated by me first of all. Borrea Coal Company Ltd. were the owners of Bhagaband Colliery and F.W. Higgars & Co. Private Ltd. were the managing agents. There were "miners sirdars", who were paid, what was known, as sardari commission. Later on, the managing agents terminated the sardari commission paid to sirdars, on the ground that they were receiving the said commission without performing their corresponding duties and obligations. In the past, the practice of the colliery was to recruit labourers through sardars, because labours used to be migratory and sardars, as agents for recruitment, proved satisfactory. Sardars, who recruited and supplied the labour force were, paid commission on the output of the labour force supplied by them. Some of the sardars used to carry out the duty of supervision of work of the labour force supplied by them in addition to their recruitment work. Sometimes this duty was performed by them voluntarily but sometimes it was imposed upon them by the management. The latter class of sardars used to be known as working sardars. Before the Supreme Court, it was contended by the workmen that the Sardars were working sardars. It is noteworthy that before the Supreme Court it was common ground that outside their regular working hours the sardars used to do supervisory work with respect to the labour force supplied by each of them. It was also common ground that the recruitment of labour through sardars was no longer permissible, because it was compulsory upon the employer by virtue of the provisions of the "Employment Exchange (Compulsory Notification of Vacancy) Act, 1959", to notify all vacancies to the Employment Exchange and to recruit labour only through the Employment Exchange. The fact, however, remained that in the colliery in question the labour force recruited through and supplied by sardars still continued to be employed. By a notice, the employer company informed the sardars that it had been observed that they were receiving sardari commission on the production of a gang of miners but there was no corresponding duties and obligations performed by them in respect of the gang. The notice further stated that it was, therefore, decided to stop sardari commission with effect from a particular date. The sardars were given liberty to withdraw their gang of miners if they wished. The dispute in regard to the breach of payment of sardari commission to such sardars was referred to the adjudication of the Central Government Industrial Tribunal at Dhanbad. Considering the facts on record, it was found that sardars who were required to do sardari work, were treated as employees of the colliery and not independent contractors. In the appeal before the Supreme Court, at the instance of Bhagaband colliery, it was contended that sardars were not workers but were independent contractors and that the commission paid to them did not amount to wages under the Industrial Disputes Act and,

as such, the reference of the dispute was incompetent. The Supreme Court negatived the contention. The reasons which weighed with the Supreme Court are hereinbelow given:

> "The reference would be competent only if the respondents in so far as they are performing supervisory duties over the labour force supplied by them were workmen as defined in the Act and the emoluments they received were wages as defined in the Act. If it is found in their favour on both these points then the dispute would certainly fall with Schedule III and it would be within the competence of the Government to refer it for adjudication to an industrial tribunal under Section 7A of the Act. The tribunal has found as a fact that the respondents were performing supervisory duties with respect to the labour force supplied by them. Now workman as defined in Section 2(s) of the Act means
>
> 'any person .... employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be expressed or implied...."
> (only relevant portion quoted).
>
> It is no doubt true that the respondents were not expressly employed as supervisors by the company but from certain correspondence which has been placed on record it seems clear that the company regarded them as their employees even with respect to the supervisory work."

The Supreme Court further discussed the evidence on the point and was pleased to observe further:

> "This is clearly indicative of the fact that the company exercised control over the supervisory work which the respondents performed in the mines. The only reasonable inference which we can draw from these letters is that the respondents must be regarded as workmen employed by the company even with respect to the supervisory work performed by them. It would thus follow that the respondents held two kinds of employment under the company, one as clerks, etc., and the other as supervisors of the labour forces supplied by each of them.
>
> What was paid to the respondents was no doubt commission at the rate of 3 pice per tub raised by the miners and sirdari of Rs. 2 per 100 tubs. According to the definition of "wages" in the Act, all renumeration "capable of being expressed in terms of money" payable to a workman in respect of his employment or for the work done in such employment would mean wages. The commission payable to sirdars being expressed in terms of money thus falls within the definition.
>
> The respondents being thus employees even in their capacity as supervisors and being in receipt of wages, a dispute concerninig the payment of wages would fall in entry 1 of the Third Schedule to the Act. The Central Government was, therefore, competent to refer the dispute in question to the Central Industrial Tribunal under Section 7A of the Act."

10. I need, therefore, discuss the evidence on the point, in this reference, and find out whether the sardars were workmen or not. It appears from Ex. 4 (marked by consent), a letter written by the Vice-President, Colliery Mazdoor Congress to the Assistant Labour Commissioner, dated August 10, 1970:

> "On behalf of the workers of Victoria West Colliery, I beg to bring it to your kind notice that Sarbasree Pir Mohammad, Dasarth Pasman, Amrit Pasman and Moti Munia are working sirdars in Victoria West Colliery. They are being paid their wages on the name of Commissions and Sardary. They are getting full Dearness allowance as per recommendations of the Wage Board Award. But Sarbasree Dasarath Pasman, Moti Munia and Amrit Pasman. Sardars are not getting wages for the paid Holidays whereas Sri Pir Mohammad is getting paid holidays wages equivalent to the individual earning of his gang worker.
>
> *** *** ***
>
> I therefore request you to take proper action so that all the Working Sirdars should get paid Holidays wages as per their daily average earnings." (Underlined by me).

This is a document exhibited by the management and the document shows that the management was not disputing the description of the sardars as *working*

sirdars, who were getting wages in the name of commission and sirdari and also dearness allowance as per recommendations of the Central Wage Board for Coal Mining Industry. It appears also from the oral evidence of Dasarath Paswan (one of the concerned workmen):

> "We do not get wages for the above mentioned holidays. Myself, Moti Nunia and Amrit Paswan, Sirdars do not get wages for the above-mentioned paid holidays but Peer Mohammad, another sirdar gets his wages for such paid holidays. Peer Mohammad has been getting such wages since 1947. Myself, Moti Nunia and Amrit Pasian verbally asked for such wages from the Manager. He stated that a dispute was pending before the High Court and nothing could be done until the High Court decision was obtained. The matter pending before the High Court is over non-payment of bonus. We then approached our Trade Union. The sirdars do supervision work over miners, under directions of the Manager. We get sirdari commission and wages both from the management. Sirdars are piece-rated workmen. We get per month an amount of Rs. 200 to Rs. 225 as wages and commission combined. I cannot say how much we get by way of wages and how much by way of commission. I claim wages for paid holidays.
>
> * * * * *
>
> To Tribunal
>
> The sirdari portion represents my salary. We do not get salary but sirdari and commission."

The only relevant question that he was asked in cross-examination was, 'the sirdari and commission are calculated on tub basis'. There was no rebutting oral evidence led on the point on behalf of the management. From the evidence it amply appears that although not expressly appointed as supervisor by the employer company, the company were treating them as their own employees and paying them wages at piece-rate on tub basis and also dearness allowance as per recommendations of the Central Wage Board for Coal Mining Industry.

11. Now, a workman as defined in Section 2(s) of the Industrial Disputes Act means:

> "any person . . . employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be expressed or implied . . ." (only relevant portion quoted).

Further, wages under Section 2(rr) of the Industrial Disputes Act means:

> ". . . . all remunerations capable of bearing expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, by payable to a workman in respect of his employment or of work done in such employment, and includes—
>
> (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
>
> *** *** *** "

Applying that test there is no escape from the conclusion that howsoever the sirdaris may have originally been imported, and may be they first came as mere recruitment agents, they have now acquired the status of workmen under the employer company, by nature of the work performed by them, by the treatment meted out to them, and by adoption of them by the employer company as workmen.

12. Mr. D. Narsingh, however, pointed out that Dasarath Paswan one of the concerned workmen, said in course of his examination-in-chief, at one place, "I cannot say how much we get by way of wages and how much by way of commission", and in answer to a question put by the tribunal, replied, "The sirdari portion represents my salary. We do not get salary but sirdari and commission". He submitted that on this contradictory statement made by one of the concerned workmen himself, it would not be safe to treat them as workmen in respect of wages. I am not impressed by the argument. I do not expect that an almost illiterate colliery sirdari to know the technical definition of wages as in the Industrial Disputes Act. These sirdars were being paid their wages in the name of sirdari and commission. That is how they described what they get. But regard being had to the work performed by them, the money that they receive

amounts, in law, to wages. Therefore, I am not prepared to attach any importance to this argument.

13. In the view that I take, I have to hold that sirdars are workmen. If they are workmen, they are entitled to all advantages to which the workmen, of the colliery are entitled. It is not disputed that the workmen of the colliery get 7 days as paid holidays in the year. The sirdars are, therefore, also entitled to such wages. I, therefore, answer the matter referred to me for adjudication in the following manner, namely, that the management of Victoria West Colliery of Messrs New Birbhum Coal Company Limited was not justified in denying payment of wages for paid holidays to Sarvashri Dasarath Paswan, Moti, Nunia and Amrit Paswan, Sirdars. These workmen are entitled to wages for paid holidays. This dispute was raised in August 1970. I, therefore, direct that they be paid wages for paid holidays following August 10, 1970.

This is my Award

Dated, February 9, 1971.

(Sd.) B. N. BANERJEE,
Presiding Officer.

[No. 6/59/70-LR.II.]

S.O. 1009.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3) Dhanbad, in the matter of an application under Section 33A of the said Act filed by Shri Shambhu Kumar and 18 others of Barora Colliery of Messrs Barora Coal Concern, Post Office Nawagarh, District Dhanbad, which was received by the Central Government on the 17th February, 1971.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT
(No. 3) AT DHANBAD
COMPLAINT No. 1 OF 1969.

PRESENT:
Shri Sachidanand Sinha, M.A.M.L., Presiding Officer.

PARTIES:
Shri Shambhu Kumar & 18 others—*Applicants* (*Complaints*)

Vs.

M/s. Barora Coal Concern, Barora Colliery, P.O. Nawagarh, Dist. Dhanbad—Opposite Party.

APPEARANCES:
For the Complainants—S/Shree J. D. Lal & P. Choudhury, Advocates.
For Opposite Party: S/Shree S. S. Mukherjee & B. Joshi, Advocates.

INDUSTRY: Coal STATE: Bihar.

Dhanbad, dated the 6th February, 1971.

AWARD

1. This complaint filed on 28th September, 1969 is brought by the workmen (complainants) under Section 33-A of the Industrial Disputes Act, 1947, arising out of reference No. 64 of 1969 against the opposite party (employers) on the ground that the opposite party has been guilty of contraventions of Section 33 of the Industrial Disputes Act, 1947.

2. The case of the complainants is that the complainants were the permanent workmen of Barora Colliery of M/s. Barora Coal Concern hereinafter referred to as opposite party. All the complainants are the members of D. J. Raj Nurkhurkee Colliery Workers Union hereinafter referred to as Workers Union. The opposite party all of a sudden illegally and without any prior notice and without any justification started paying wages at considerably reduced rates to weekly paid employees including the complainants from 26th November, 1968 i.e. week ending 1st December, 1968. When all sincere, honest and lawful attempts of the workers union failed then on 16th May, 1969 the workers union served on the opposite party proper strike notice in accordance with the provisions of the Industrial Disputes

Act, 1947. The matter was taken up for conciliation but the conciliation proceeding failed and the workers union called a strike on 5th June, 1969 and the dispute was reported to the Central Government which referred the dispute for adjudication to this Tribunal by order dated 15th September, 1969. The reference in the said industrial dispute is "whether the action of the management of Barora Colliery of M/s. Barora Coal Concern, Post Office Nawagarh, District Dhanbad in reducing the rate of wages of the weekly paid workers with effect from 26th November, 1968 was justified? If not, to what relief are the workmen entitled?" This reference has been listed as Reference No. 64 of 1969 by this Tribunal. After the reference of this dispute the Central Government by its another order No. 2/124/69-LRII(1) dated 15th September, 1969 prohibited continuance of the strike by the employees of Barora Colliery of M/s. Barora Coal Concern.

3. While the above dispute was pending with the Central Government after failure of the conciliation in the matter the opposite party issued the charge sheets all dated 16th July, 1969 to the complainants. One of the charge which is common to all and which is levelled against the complainants is participation by the workmen in the illegal strike. Other charges are also in connection with the said strike. Thus the alleged misconducts are connected with the aforesaid industrial dispute. The complainants gave reply to the said charge sheets individually and separately in their letters of reply dated 18th July, 1969 denying the charges of resorting to an illegal strike and other charges as well. And at the same time requested the opposite party to clarify certain charges stated in the charge sheets specifically in order to enable the complainants to meet the charges effectively and properly.

4. The opposite parties wrote letters all dated 25th July, 1969 to all the complainants individually in reply to the complainants' letters dated 18th July, 1969 wherein instead of clarifying the charges as requested by the complainants in their said letters, the opposite party confused complainants by asking them to refer to the facts in connection with proceeding under Section 107 Cr. P. C. pending in the Court of the S.D.M. Baghmara at Dhanbad. The complainants sent letter dated 30th July, 1969 to the opposite party in reply to their aforesaid letter dated 25th, July, 1969 wherein the complainants again requested the opposite party to clarify the charges as asked for by them earlier. The opposite party instead of complying with reasonable request of the complainants for clarification of charges levelled against them, got published a notice in weekly newspaper 'Awaz' in its issue dated 29th August, 1969 and 5th September, 1969 regarding holding of enquiry against the complainants on various dates as mentioned in the said notices. After going through the said notices in weekly 'Awaz' dated 29th August, 1969 and 5th September, 1969 regarding holding of domestic enquiry the complainants addressed two joint letters dated 5th September, 1969 and 10th September, 1969 to the opposite party wherein the complainants requested the opposite party to postpone holding of the said departmental enquiry against the complainants due to the fact that tense situation was prevailing in the colliery and that there was an apprehension of breach of peace in the colliery.

5. After the reference of the dispute by the Central Government regarding reduction of wages of the weekly paid employees of this colliery including the complaints, to this Tribunal which is reference No. 64 of 1969 the workers' union terminated the strike by their letter dated 29th September, 1969, addressed to the opposite party. On 27th September, 1969, the President of the workers union Sri Mohan Mukherjee sent all the workers to resume their duty with a letter, dated 27th September, 1969, addressed to the opposite party in which the opposite party was requested to provide all the workmen with employment as the strike was already called off. Shri M. P. Narang, Agent of the Colliery gave a note on the office copy of the said letter that except the 19 workmen (*i.e.* the complainants) all others could join their duty and at the same time these 19 complainants were verbally refused employment by the said Agent Sri M. P. Narang of the Colliery who also told them that the first twelve complainants *i.e.* from serial Nos. 1 to 12 (both inclusive) had already been dismissed with effect from 18th September, 1969 and that the last seven complainants *i.e.* serial Nos. 13 to 19 were dismissed from service with effect from 30th September, 1969, as a result of domestic enquiry held *ex-parte* against them in which they were found guilty of the charges.

6. The action of the opposite party in dismissing the complainants is arbitrary, capricious, *malafide*, defective, unjustified and vindictive which amounts to unfair labour practice. It was further alleged that the opposite party has contravened provisions of Section 33(1)(b) of the Industrial Disputes Act, 1947, inasmuch as the complainants are connected with the dispute in Reference No. 64 of 1969 pending for adjudication before this Tribunal and that the alleged misconducts

mentioned in the charge sheets and for which the complainants have been dismissed by the opposite party are also connected with the strike concerning the said industrial dispute (the matter under Reference No. 64 of 1969) and hence the opposite party was not justified in dismissing the complainants without obtaining prior permission of the Tribunal under Section 33(1)(b) of the Industrial Disputes Act, 1947 when the order of reference was made on 15th September, 1969 and the dismissal was made on and from 18th September, 1969.

7. The complainants were not given reasonable and fair opportunity to meet the confusing charges and to defend themselves in the domestic enquiry which was held hurriedly *ex-parte* with pre-determined object of terminating services of these complainants. The opposite party instead of intimating the date, time and venue of the enquiry to be held through registered letters to the complainants and the workers union, chose an unusual procedure to publish all this information in weekly Hindi newspaper 'Awaz' dated 29th August, 1969 and 5th September, 1969. The opposite party could not have conducted the domestic enquiry *ex-parte* simply because the complainants did not attend the enquiry on the first day and should have given them another opportunity to the complainants to defend themselves.

8. No order of dismissal in writing has been served on the complainants and only when they went to the colliery to resume their duty on 27th September, 1969 after termination of the strike they were told verbally by the opposite party that they had been dismissed from service and they were not allowed to resume duty. Even at the time when they went to resume duty the opposite party did not serve on them the order of dismissal. On these grounds the present complaint has been filed for passing such orders as may deem fit and proper.

9. The opposite party filed their written statement on 14th December, 1969. Their case is that they have not contravened the provisions of Section 33 of the Industrial Disputes Act and as such the present complaint is not legally maintainable.

10. The complainants were permanent workmen of Barora Colliery of M/s. Barora Coal Concern. D. J. Raj Nudkhurkee Workers Union is a newly formed union which is trying to have foot-hold in this colliery. The union called 'Colliery Mazdur Sangh' affiliated to I.N.T.U.C. has been functioning in this colliery for quite some time long and is the only union effectively working in this colliery and is the recognised union by the employers.

11. The opposite party was paying wages to the workmen as per recommendations of the Coal Wage Board as a trial measure at the instance of the recognised and representative union called Colliery Mazdur Sangh, Barora Branch. The financial position of the opposite party deteriorated and it was found that the continuance of payment of wages as per Coal Wage Board will lead to closure of the Colliery and as such in large interest of the workmen an agreement dated 24th September, 1968, with the representative and recognised union called Colliery Mazdur Sangh was entered into and the opposite party began making payment to the workers of the Colliery as per conditions laid down in the said agreement dated 24th September, 1968. Hence forward the rates of wages paid to the employees in term of settlement entered into by the opposite party and the recognised union namely Colliery Mazdur Sangh, Barora Branch. The management gave due respect to the agreement dated 24th September, 1968, between the management of Barora Colliery and their workmen represented by the Colliery Mazdur Sangh.

12. The Central Government has referred the dispute to this Tribunal for adjudication by its order No. 2/124/69-LRII, dated 15th September, 1969 and the same has been registered as Reference No. 64 of 1969. The above letter of reference was received by the opposite party on 19th September, 1969. It was further alleged that in utter violation of the Government Notification, dated 15th September, 1969, to call off the illegal strike the same was continued by the workers even thereafter.

13. The charges mentioned in the charge sheet have bearing with the illegal trike and it was asserted that these charges have no connection with the issue under Reference No. 64 of 1969. The concerned workmen were given necessary documents and necessary information in connection with the charges levelled against them in order to prepare their defence and the opposite party afforded full opportunity to them to defend their case.

14. The opposite party sent by registered post the letters of enquiry to individual workmen fixing different dates of enquiry but all these letters were returned

to opposite party undelivered as refused. Thereafter the opposite party published in Hindi newspaper 'Awaz' dated 29th August, 1969 and 5th September, 1969, regarding the said enquiry.

15. The opposite party received letters, dated 5th September, 1969 and 10th September, 1969 from the complainants. The opposite party immediately informed the workmen by displaying notice, dated 9th September, 1969 in the notice board of the Colliery and copies of this notice were also posted in conspicuous places of the Dhowrahr of the complainants.

16. The opposite party dismissed the workmen mentioned in serial Nos. 1 to 12 from 18th September, 1969 by its letter, dated 18th September, 1969 and dismissed other workmen mentioned in serial Nos. 13 to 19 by its letter, dated 23rd September, 1969, with effect from 30th September, 1969.

17. The order of reference in Reference No. 64 of 1969 is dated 15th September, 1969 and a copy of the same was received by the opposite party on 19th September, 1969. Seven workmen mentioned in serial Nos. 13 to 19 were dismissed after the date of receipt of the letter of the said reference and applications under Section 33(2)(b) of the Industrial Disputes Act, 1947, were filed before this Tribunal for approval of dismissal of the said workmen and these applications are listed as Application Nos. 1 to 7 of 1969.

19 It was submitted that the present complaint under Section 33-A is not maintainable on the ground that the dismissal of the workmen mentioned in serial Nos. 1 to 12 was effected before the receipt of the order of reference by the opposite party and that applications under Section 33(2)(b) have already been filed in respect of the workmen mentioned in serial Nos. 13 to 19.

19. The concerned workmen deliberately avoided attending the departmental enquiry for the purpose best known to themselves. Letters of dismissal were sent to them individually by registered A.D. post but the concerned workmen refused to accept delivery of the said letters and as such Regd. envelopes containing the said letters of dismissal were received back by the opposite party undelivered with the remark by the postal authority as 'refused.' According to the opposite party the complainants took active part in organising the illegal strike and committed serious misconducts for which they were dismissed. On these grounds it was alleged by the opposite party that the complaint may be dismissed.

20. On behalf of the opposite party 175 items of documents have been examined and these are marked as Ext. M-1 to 175. Ten items of documents have been exhibited on behalf of the complainants and these are marked as Ext. W-1 to W-10. On behalf of the opposite party 4 witnesses are examined. MW-1 is Banwarilal Mahato the office clerk in Dhanbad office of Barora Colliery. He is a formal witness who proved Ext. M-51 to M-158. MW-2 is R. P. Sinha, the attendance clerk of Barora Colliery. He is also a formal witness and has proved Ext. M-159 to M-168. MW-3 is S. P. Singh who worked as Personnel Officer at Barora Colliery from June, 1962 to March, 1970 and he had conducted the departmental enquiry in respect to the complainants. The enquiry proceedings are Ext. M-159 to M-164 and these are in his pen. He has further proved Ext. M-169 to M-174—the enquiry reports and have stated that these enquiry reports were prepared by him. MW-4 is B. R. Mehra. He stated that he appeared as a witness in the said domestic enquiry.

21. On behalf of the complainants nine witnesses have been examined. CW-1 is Bideshi Manjhi. CW-2 is Mohini Mahato and CW-3 is Meghlal Mahato. These three do not happen to be the workmen concerned in this Complaint. CW-4 Gajo Mahato, CW-5 Jagdip Chamar, CW-6 Sohrai Manjhi and CW-7 Manger Mahato and CW-8 Kailash Chamar are the workmen concerned mentioned in serial Nos. 19, 14, 17, 16 and 9 of this Complaint. Their case is that they did not commit any misconduct and that they were dismissed by the management because they were active members of D. J. Rai Mudkhurkee Colliery Workers Union. CW-9 is Benimoy Mukherjee the General Secretary of D.J. Raj Nudkhurkee Colliery Workers Union. He stated in his evidence that he came to know of the departmental enquiry when it was published in the weekly newspaper 'Awaz' and that he informed of the date of enquiry to the workmen concerned and also wrote letter to the management requesting them to postpone the enquiry on the ground mentioned therein. In the ex-examination it was challenged that he was not the General Secretary of D.J. Rai Nudkhurkee Colliery Workers Union for this year. It was also taken in the ex-examination that there was a criminal case pending against him under Section 307 I.P.C. on the allegation that he had assaulted Sri K. L. Sablok, Manager of Nadkhurkee Colliery and that also another case under

Section 302 I.P.C. was pending against him about a murder in Madhuband Colliery.

22. The first point taken by the complainants is that the Central Government by Notification, dated 15th September, 1969, referred the Industrial dispute to this Tribunal being reference No. 64 of 1969 which is pending. The complainants are the workmen concerned in the said dispute. The alleged misconducts for which the complainants have been dismissed, are connected with the industrial dispute in the said Reference No. 64 of 1969 pending before this Tribunal. Therefore it is submitted that prior permission of this Tribunal under Section 33(1) of the Industrial Disputes Act, 1947 was essential before dismissing the complainants. Therefore, their case is that they could not be dismissed without prior permission of the terminal under Section 33(1)(b) of the Industrial Disputes Act, 1947.

23. Sub-section (1)(b) imposes a ban on an employer in taking a disciplinary action against a workman concerned in the dispute for any misconduct connected with the dispute, except with the express permission of the authority before whom the proceeding is pending. The requirements of this clause are:

(i) There should be a pendency as under sub-section (1)(a) in respect of an industrial dispute;

(ii) The workmen claiming protection should not only be a workman within the meaning of S.2(s), but he should also be a workman concerned in the pending dispute;

(iii) The action proposed to be taken should be 'discharge' or 'punishment' by dismissal or otherwise;

(iv) Such discharge or punishment should be in regard to any misconduct connected with the pending dispute.

24. If these four conditions exist, the employer can discharge or punish the workman concerned by dismissal or otherwise only by express permission of the authority before whom the proceeding is pending. In absence of such permission, the employer will expose himself to the consequences under S.31 and S.33-A.

25. The Central Government by notification dated 15th September, 1969, referred an industrial dispute to this Tribunal being reference No. 64 of 1969. The schedule of reference runs as follows:

"Whether the action of the management of Barora Colliery of M|s. Barora Coal Concern, Post office Nawagarh, District Dhanbad in reducing the rate of wages of weekly paid workmen with effect from 26th November, 1968, was justified? If not, to what relief are the workmen entitled?"

26. Ext. M-1 to M-19 are the charge sheets in respect of the nineteen complainants. The charges are almost common and they are:

(a) You participated in an illegal strike with effect from 5th June, 1969 and also instigated some others to resort to the above illegal strike.

(b) You participated in obstructing the quenching of fire blazing in the soft coke bhattas on 5th June, 1969, by show of criminal force.

(c) You participated in preventing the willing workmen from going down the mine on 5th June, 1969, by show of criminal force.

(d) You participated in stopping water supply to the staff and workers who did not take part in the illegal strike on 8th June, 1969.

27. A mere perusal of these misconducts mentioned in the aforesaid charge sheets will show that these are quite different from the dispute mentioned in Reference No. 64 of 1969. Therefore, Section 33(1)(b) is not applicable to the facts of this Complaint. The complainants are therefore, governed by Section 33(2)(b) of the Industrial Disputes Act, 1947.

28. The opposite party has filed applications under Section 33(2)(b) of the Industrial Disputes Act, 1947, in respect to the workmen mentioned in serial Nos. 13 to 19 of the Complaint being Application Nos. 1 to 7 of 1969. Ext. M-50 is certified copy of the order in Application No. 1 of 1969. The opposite party had filed this Application under sub-section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of dismissal of Kameshar Beldar—the complainant mentioned in serial No. 13 of the Complainant. In that application case Kameshar Beldar—the complainant at serial No. 13 in this Complaint admitted in his evidence, his guilt and also admitted that he had received full and final payment of his dues

from the management and the said application under Section 33(2)(b) was accordingly allowed and dismissal of the complainant No. 13 Kameshar Beldar with effect from 30th September, 1969, was approved.

29. Application Nos. 2 to 7 of 1969 filed by the opposite party under Section 33(2)(b) of the Industrial Disputes Act, 1947 relate to the complainants mentioned in serial Nos. 14 to 19. In view of filing of these applications under Section 33(2)(b) there is no contravention of Section 33 in respect to the aforesaid workmen mentioned in serial Nos. 13 to 19 of this Complaint and if there is no contravention of Section 33 the jurisdiction under Section 33-A cannot be evoked by the workman. Therefore, I find that the Complaint in respect to the complainants mentioned in serial Nos. 13 to 19 is not maintainable.

30. The workmen mentioned in serial Nos. 1 to 12 have been dismissed with effect from 18th September, 1969. The opposite party did not file any application for approval of dismissal of these 12 workmen under Section 33(2)(b) of the Industrial Disputes Act, 1947. The opposite party have submitted before me that by order No. 2/124/69-LRII, dated 15th September, 1969, the Central Government referred the industrial dispute to this Tribunal and that the said dispute has been registered as Reference No. 64 of 1969. Their case is that they received copy of the order of the reference from the Central Government on 19th September, 1969 *vide* Ext. M-150 and that the same was published in the Gazette of India issued on the 20th September, 1969 (Ext. M-48). Their contention is that that they had dismissed the said workmen *i.e.* the complainants mentioned in serial Nos. 1 to 12 in this Complaint before they had knowledge of the reference of the said industrial dispute. So they did not apply for approval as according to them there was no pendency of any reference and such formality was unwarranted. But according to construction of law the reference is deemed to have been pending since 15th September, 1969 and hence there being no applications for approval of dismissal of these workmen mentioned in serial Nos. 1 to 12 I find that there is a *prima-facie* contravention of Section 33 of the Industrial Disputes Act, 1947.

31. Section 33-A gave to any employee aggrieved by his employers' contravention of the provision of S. 33 during the pendency of the proceeding before a Labour Court, Tribunal or a National Tribunal, the right to have his complaint adjudicated as if it were a dispute pending before the adjudicating authority. The section postulates the following five things:

(i) A proceeding pending before a Labour Court, Tribunal or a National Tribunal;

(ii) A contravention of the provisions of S. 33 by the employer during such pendency;

(iii) A complaint in writing in the prescribed manner by the aggrieved employee to the concerned authority against such contravention;

(iv) Adjudication upon the complaint by the concerned authority as if it was an industrial dispute referred to or pending before it and submission of its award to the appropriate government; and

(v) Publication of the award by the appropriate government under Section 17-A.

32. Contravention of Section 33 for the purpose of Section 33-A takes place where during the pendency of an industrial dispute before the labour court, Industrial Tribunal or a National Tribunal, the employer:

(i) discharges or punishes a workman, by dismissal or otherwise for a misconduct connected with the pending dispute, without obtaining prior permission of the appropriate authority as required by S. 33(1)(b);

(ii) discharges or punishes a workman, by dismisal or otherwise, for misconduct not connected with the pending dispute, without complying with the requirements of the proviso to Section 33(2)(b).

33. An enquiry under Section 33-A is not confined only to the determination of the question as to whether the alleged contravention by the employer of the provision of Section 33 during the pendency of an industrial dispute has been proved or not. It is the duty of the Tribunal in such a case to deal with the question of contravention of Section 33 of the Act during the pendency of a proceeding as well as with the merits of the order of dismissal. If an application is made by a dismissed employee under Section 33-A of the Act it is shown that the impugned dismissal of the employee has contravened Section 33; it is open to the employer to justify the dismissal on merit by adducing satisfactory evidences before the Tribunal.

34. Therefore the question under consideration comes whether the dismissal of the worker mentioned in serial Nos. 1 to 12 in the Complaint is justified.

35. In the present case we find that the opposite party served charge sheets on the complainants. The allegations on which the charges were framed against the complainants were as under:

(a) You participated in an illegal strike w.e.f. 5th June, 1969, and also instigated others to resort to the above illegal strike.

(b) You participated in obstructing the quenching of fire blazing in soft coke bhattas on 5th June, 1969, by show of criminal force.

(c) You participated in preventing the willing workers from going down the mine on 5th June, 1969, by show of criminal force.

(d) You participated in stopping water supply to the staff and workers who did not take part in the illegal strike on 8th June, 1969.

36. The complainants submitted their reply to the charge sheets and these are marked as Ext. M-20 to M-31. In reply to the charge sheets they stated that it was not an illegal strike and they further stated that time of other misconducts should be mentioned in order to enable them to give proper reply. According to complainants other charges were vague and they wanted clarification. The opposite party sent letters dated 25th July, 1969, (Ext. M-51 to 62) to the respective complainants regarding clarification of the charges. In that letter it was stated by the opposite party that the complainants were already aware of the facts of the case under section 107 Cr. P.C. and also enclosed therewith copies of the three letters dated 5th July, 1969, 8th July, 1969 and 25th July, 1969 addressed by certain workmen to the Agent complaining about the alleged misconducts of the complainants. Ext. M-70 and M-76 to M-86 are the letters addressed to these complainants giving notice of the domestic enquiry to be held on 2/4th September, 1969 in the office of Barora Colliery. These notices were sent by registered A.D. post but they were all returned to the opposite party undelivered as 'refused' and these envelopes are marked as Ext. M-94 and M-100 to M-110. Ext. M-118 and M-119 are copies of the weekly newspaper 'Awaz' dated 29th August, 1969, and 5th September, 1969. In these issues of the weekly the opposite party published the notice of enquiry and the notices speak that the domestic enquiry would be held against the complainants on the dates mentioned therein. CW-9 Benimoy Mukherjee, examined on behalf of the complainants, has stated in his evidence that he came to know of the domestic enquiry when it was published in these issues of weekly 'Awaz' and he has further stated that he informed the date of enquiry to the complainants. The complainants concerned have also stated before me that they came to know of the dates of domestic enquiry when it was published in 'Awaz'. Ext. M-45 and M-46 are the letters dated 5th September, 1969 and 10th September, 1969 of the complainants concerned jointly written by them to the Agent of Barora Colliery Sri M. P. Narang requesting him to postpone the domestic enquiry till the strike is called off and peace and normalcy restored. Ext. M-120 is letter dated 9th September, 1969, in which the opposite party informed the complainants that there shall not be any breach of peace and that the workmen concerned need not fear at all and that already sufficient time had been allowed to them This letter dated 9th September, 1969, was sent by the opposite party under registered A.D. post but the same was also refused by the complainants and the undelivered envelop with the postal authority remark 'refused' is marked as Ext. M-121. MW-2 Sri R.P. Sinha has stated in his evidence that the letter dated 9th September, 1969, (Ext. M-120) was also exhibited on the notice board of the Colliery and that the same was also kept displayed in the Dhowrahs of the complainants through Sri Parmeshwar Choubey under his instructions. There is no examination of MW-2 on behalf of the complainants on this point. Thereafter the opposite party held the departmental enquiry on 10th, 11th and 12th September, 1969. Ext M-159 and M-161 to M-164 are the enquiry proceedings. Ext. M-46 is joint letter addressed by some of the complainants which was sent on 10th September, 1969, under Regd. A.D. cover and was accordingly received by the opposite party on the 13th September 1969. Ext. M-122 is reply by the opposite party to the said letter (Ext. M-46) and the opposite party informed the complainants that their letter (Ext. M-46) was received by the management on 13th September, 1969, when the domestic enquiry had already been completed. Ext. M-123 to M-134 are the letters of dismissal dated 18th September, 1969, stating that the misconducts mentioned in the charge sheets were satisfactorily established in the domestic enquiry and that the workmen concerned were accordingly dismissed from service with effect 18th September. 1969. These letters of dismissal were also sent to the complainants concerned by Regd. A.D. post but delivery of these letters was also not accepted by the complainants and Regd. A.D. covers

of these letters of dismissal with remark 'refused' are marked as Ext. M-123A to M-134A.

37. Therefore I find that when these complainants who were given an opportunity to take part in the domestic enquiry they refused to avail of the same and deliberately absented themselves. They could not therefore, be allowed to complain that the action of the opposite party in proceeding with the enquiry exparte was not fair and proper.

38. The opposite party also filed three affidavits in respect of the complainants mentioned in serial nos. 1, 5 and 11 of the complaint and these are marked as Ext M-151 to M-153. Affidavits appear to have been made before a 1st Class Magistrate. In these affidavits these three workmen concerned mentioned in serial nos. 1, 5 and 11 of this Complaint have fully admitted their guilt. Ext. M-154 to M-15 are the vouchers showing that these three concerned workmen also received full and final payment of their dues from the opposite party. None of these three workmen concerned have been examined before this Tribunal on behalf of the workmen *i.e.* the complainants in order to challenge the correctness of these affidavits adn vouchers of payments. Out of the remaining nine complainants only one workman Kailash Chamar mentioned in serial no. 9 of the Complaint was examined as witness on behalf of the complainants. He also could not say anything convincingly that the allegations in the misconducts against them were not correct.

39. Hence my finding is that the opposite party made out a *prima-facie* case against the complainants mentioned in serial nos. 1 to 12 and that the opposite party held a proper domestic enquiry into the charges levelled against the complainants in the charge sheets and that after the charges were satisfactorily established in the said domestic enquiry these complainants were dismissed from service with effect from 18th September, 1969.

40. In this view of the case I find that the dismissal of the complainants mentioned in serial nos. 1 to 12 in the complaint is justified.

41. In short my findings therefore, are—

(a) inasmuch as the complainants mentioned in serial nos. 13 to 19 are concerned this complaint under Section 33A is not maintainable since there is no contravention of Section 33;

(b) dismissal of the remaining twelve workmen mentioned in serial nos. 1 to 12 w.e.f. 18th September, 1969 is justified; and

(c) this complaint is accordingly dismissed.

(Sd.), SACHIDANAND SINHA,
Presiding Officer,
Central Government Industrial Tribunal-*cum*-Labour Court No. 3.
Dhanbad.

[No. L.2014(2)/71-LR.II.]

S.O. 1010.—Whereas an industrial dispute exists between the employers in relation to the Management of New Damgoria Colliery, Post Office Salanpur, District Burdwan and their workmen represented by the Colliery Mazdoor Congress (HMS), Post Office Asansol, District Burdwan (hereinafter referred to as the Union);

And whereas the said employers and the Union have by a written agreement in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration of the person specified therein, and a copy of the said agreement has been forwarded to the Central Government;

Now, therefore, in pursuance of the provisions of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement.

FORM 'C'

(*See* Rule 7)

AGREEMENT

(Under Section 10A of the Industrial Disputes Act, 1947)

BETWEEN

NAME OF PARTIES:

Representing employers—Shri P. N. Chaturvedi, Chief Personnel Officer, New Damagoria Colliery, P.O. Salanpur, Distt. Burdwan.

Representing workmen—Shri S. K. Rudra, General Secretary, Colliery Mazdoor Congress (HMS), Bengal Hotel, Asansol.

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri B. S. Sachdev, Assistant Labour Commissioner (Central), Asansol.

(i) *Specific matters in dispute*

"Whether the management of New Damagoria Colliery of the New Damagoria Coal Co. (P) Ltd., P.O. Salanpur, Distt. Burdwan was justified in retrenching the following 19 workmen with effect from 23rd June, 1970? If not, to what relief are these workmen entitled?"

1. Shri. Mukhram Shah.
2. Shri Ramprasad Shah.
3. Shri Morai Shah.
4. Shri Anrudh Dhuniya.
5. Shri Dinanath Gareri.
6. Shri Siyaram Nunia.
7. Shri Ramasankar Ram.
8. Shri Trijugi Narayan Gareri.
9. Shri Umashankar Koiri.
10. Shri Dukhit Ram.
11. Shri Kayda Hossain.
12. Shri Harhangi Nunia.
13. Shri Md. Islam Mia.
14. Shri Md. Idrish Mia.
15. Shri Ch. Ram Prosad Shah.
16. Shri Joynath Gareri.
17. Shri Golap Harijan.
18. Shri Prahlad Teli.
19. Shrimati Sam Bai.

(ii) Details of the parties to the dispute including the name and address of Estt. or undertaking involved—Employers in relation to New Damagoria Colliery, P.O. Salanpur, Distt. Burdwan.

(iii) Name of the union, if any, representing the workmen in question—Colliery Mazdoor Congress (HMS), Bengal Hotel, Asansol.

(iv) Total No. of workmen employed in the undertaking affected—332.

(v) Estimated No. of workmen affected or likely to be affected by the dispute—19 (Nineteen).

We further agree that the decision of the arbitrator shall be binding on us.

The arbitrator shall make his award within a period of six months or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Witnesses.

1. (Sd.) Illegible.
2. (Sd.) Illegible.

Signature of the parties.

(Sd.) P. N. CHATURVEDI,

26.11.70.

Representing employers.

(Sd.) S. K. RUDRA.

Representing workmen.

[No. 8/206/70-LRII.]

श्रम, रोजगार और पुनर्वास मंत्रालय

(श्रम और रोजगार विभाग)

नई दिल्ली, 23 फरवरी 1971

का० आ० 1010—यतः न्यू दामगोरिया कोलियरी, डाकघर सालनपुर, जिला बर्दवान के प्रबन्धकों से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच जिनका प्रतिनिधित्व कोलियरी मजदूर कांग्रेस (हिन्द मजदूर सभा), डाकघर आसनसोल, जिला बर्दवान (जिसे इसमें इसके पश्चात् संघ कहा गया है) करती है, एक औद्योगिक विवाद विद्यमान है ;

और यतः उक्त नियोजक और संघ, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10-क की उपधारा (1) के उपबन्धों के अनुसरण में एक लिखित करार द्वारा उक्त विवाद को उसमें विनिर्दिष्ट व्यक्ति के माध्यस्थम् के लिए निर्देशित करने के लिए सहमत हो गए हैं और उक्त करार की एक प्रति केन्द्रीय सरकार को भेज दी गई है ;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10-क की उपधारा (3) के उपबन्धों के अनुसरण में, केन्द्रीय सरकार उक्त माध्यस्थम् करार को, एतद्द्वारा प्रकाशित करती है।

प्ररूप ग

(नियम 7 देखें)

(औद्योगिक विवाद अधिनियम, 1947 की धारा 10-क के अधीन)

करार

पक्षकारों के नाम:	
नियोजकों का प्रतिनिधित्व करने वाले :—	श्री पी० एन० चतुर्वेदी, मुख्य कार्मिक अधिकारी, न्यू दामागोरिया कोलियरी, डाकघर सालनपुर, जिला बर्दवान।
कर्मकारों का प्रतिनिधित्व करने वाले :—	श्री एस० के० रुद्र, महा सचिव कोलियरी मजदूर कांग्रेस (हिन्द मजदूर सभा), बंगाल होटल, आसनसोल।

पक्षकारों के बीच निम्नलिखित औद्योगिक विवाद को श्री बी० एस० सत्यदेव, सहायक श्रमायुक्त (केन्द्रीय), आसनसोल के माध्यस्थम के लिए निर्देशित करने का एतद्द्वारा सहमति हुई है।

1 विवाद ग्रस्त विनिर्दिष्ट विषय .	1 क्या न्यू दामागोरिया कोल कम्पनी (प्रा०) लिमिटेड, डाकघर सालनपुर, जिला बर्दवान की न्यू दामागोरिया कोलियरी के प्रबन्धकों का निम्नलिखित 19 कर्मकारों की 23-6-1970 से छंटनी करना न्यायोचित था ?

यदि नहीं, तो ये कर्मकार किस अनुतोष के हकदार हैं ?

1 श्री मुखराम शाह ।
2 श्री रामप्रसाद शाह ।
3 श्री मोराई शाह ।
4 श्री अनरुद्ध धुनिया ।
5 श्री दीनानाथ गरेरी ।
6 श्री सियाराम नूनिया ।
7 श्री रमाशंकर राम ।
8 श्री त्रिजुगी नारायण गरेरी ।
9 श्री उमाशंकर कोहरी ।
10 श्री दुखित राम ।
11 श्री केदा हुसैन ।
12 श्री हरहंगी नुनिया ।
13 श्री मुहम्मद इस्लाम मिया ।
14 श्री मुहम्मद इद्रीश मिया ।
15 श्री चौधरी राम प्रसाद शाह ।
16 श्री जयनाथ गरेरी ।
17 श्री गोलाप हरिजन ।
18 श्री प्रहलाद तेली ।
19 श्रीमती साम बाई ।

2 विवाद के पक्षकारों का विवरण, जिसमें अंतर्वलित स्थापन या उपक्रम का नाम और पता भी सम्मिलित है ।	न्यु दामागोरिया कोलियरी, डाकघर सालनपुर, जिला बर्दवान से सम्बद्ध नियोजक ।
3 यदि कोई संघ प्रश्न गत कर्मकारों का प्रतिनिधित्व करता हो तो उसका नाम ।	कोलियरी मजदूर कांग्रेस (हिन्द मजदूर सभा) बंगाल होटल, आसनसोल ।
4 प्रभावित उपक्रम में नियोजित कर्मकारों की कुल संख्या ।	332
5 विवाद द्वारा प्रभावित या सम्भाव्यतः प्रभावित होने वाले कर्मकारों की प्राक्कलित संख्या	19 (उन्नीस)

हम यह करार भी करते हैं कि मध्यस्थ का विनिश्चय हम पर आबद्धकर होगा ।

मध्यस्थ अपना पंचाट छह मास की कालावधि या इतने और समय के भीतर, जो हमारे बीच पारस्परिक लिखित करार द्वारा बढ़ाया जाए, देगा । यदि पूर्व–वर्णित कालावधि के भीतर पंचाट नहीं दिया जाता है तो माध्यस्थम् के लिए निर्देश स्वतः रद्द हो जाएगा और हम नए माध्यस्थम के लिए बातचीत करने को स्वतंत्र होंगे ।

पक्षकारों के हस्ताक्षर

पी० एन० चतुर्वेदी । 26–11–70
नियोजकों का प्रतिनिधित्व करने वाले

एस० के० रुद्रा
कर्मकारों का प्रतिनिधित्व करने वाले ।

साक्षी

1० /———————————
2 ह० /———————————

[सं० 8/206/70–एल०आर०–2]

करनेल सिंह, अवर सचिव ।

New Delhi, the 27th January 1971

S.O. 1011.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Jambad Colliery (Messrs North Adjai Coal Private Limited), Post Office Kajoragram, District Burdwan, and their workmen which as received by the Central Government on the 22nd February, 1971.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

REFERENCE NO. 65 OF 1970

PARTIES:

Employers in relation to the management of Jambad Colliery (Messrs North Adjai Coal Company Private Limited),

AND

Their workmen.

PRESENT:

Mr. B. N. Banerjee—Presiding Officer.

APPEARANCES:

On behalf of Employers—Sri Manoj Kumar Mukherjee, Advocate.

On behalf of Workmen—Sri S. N. Banerjee, Advocate.

STATE: West Bengal. INDUSTRY: Coal Mines.

AWARD

By Order No. 6/76/70-LRII, dated December 2, 1970, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following industrial dispute between the employers in relation to the management of Jambad Colliery (Messrs North Adjai Coal Company Private Limited) and their workmen, to this Tribunal, for adjudication, namely:

"Whether the management of Jambad Colliery (Messrs North Adjai Coal Private Limited), Post Office Kajoragram, District Burdwan are justified in not paying Variable Dearness Allowance at the rate of Rs. 1.53 per day with effect from the 1st April, 1970 in accordance with the recommendations of the Central Wage Board for Coal Mining Industry as accepted by the Government of India in their Resolution No. WB-16(5)/66, dated the 21st July 1967? If not, to what relief are the workmen entitled?"

2. Both the parties filed their respective written statement. Thereafter, they themselves settled their dispute and to-day the date fixed for peremptory hearing parties filed a joint petition of compromise therein embodying the terms of settlement. Now, that the parties have settled their dispute, I pass an award in terms of the settlement. Let the petition of settlement form part of this award.

Dated,
February 17, 1971.

B. N. BANERJEE,
Presiding Officer.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 65 OF 1970

In the matter of an Industrial dispute

BETWEEN

Employers in relation to the management of Jambad Colliery (Messrs. North Adjai Coal Co. (P) Ltd..) Post Office Kajoragram. District Burdwan.

AND

Their Workmen, represented by Colliery Mazdoor Congress (H.M.S.), Bengal Hotel. Asansol, District Burdwan.

AND

In the matter of Government of India, Ministry of Labour, Employment & Rehabilitation (Department of Labour and Employment), Order No. 6/76/70-LR.II, dated 2nd December, 1970.

The humble joint petition of the parties abovenamed in the aforesaid matter most

Respectfully Sheweth:

1. That the aforesaid industrial dispute is pending adjudication before this learned Tribunal and to-day i.e. the 17th February, 1971 is fixed for hearing of the same.

2. That the parties have in the meantime come to an amicable settlement of the said dispute on the following terms and conditions:

A. That the employers in relation to the management of Jambad Colliery [Messrs North Adjai Coal Co. (P) Ltd.,] hereby agree to pay to the workmen the difference of variable dearness allowance to all the eligible workmen in the following manner:

(i) From 1st October 1970 to 31st July, 1971 @ Rs. 1.62 per day.

(ii) The amount already paid @ Rs. 1.29 per day to eligible workmen from 1st October 1970 to 31st January 1971 will be deducted from the same.

(iii) The management shall not reduce the rate from Rs. 1.62 per day of variable dearness allowance during the rest of the period i.e. upto 31st July 1971, even if it goes down on account of fall in cost of living index.

(iv) The management shall, however, pay variable dearness allowance at increased rate if the cost of living index goes up.

(v) The arrear amount for the period from 1st October 1970 to 31st January 1971, as indicated in clauses (i) and (ii) above shall be paid in four monthly instalments beginning from April, 1971 and ending in July, 1971 and the management shall pay @ Rs. 1.62 per day from 2nd February, 1971.

3. That the terms aforementioned are reasonable and just.

4. That the petitioners shall suffer irreparable loss and injury if this learned Tribunal does not pass an Award in terms of the aforesaid settlement.

In the circumstances stated above, amongst others, the petitioners jointly pray that this learned Tribunal may be graciously pleased to pass an Award in terms of the settlement.

And the petitioners, as in duty bound, shall ever pray.

Dated, the 17th February, 1971.

For the Employers.
For North Adjai Coal Co. Private Ltd.
(Sd.) Illegible,
Special Officer

For the Workmen.

Approved by Hon'ble High Court, Calcutta.

(Sd.) Illegible
Joint Secretary,
Colliery Mazdoor Congress (H.M.S.)
Asansol.

S. N. BANERJEE,
Advocate.
17.2.71.

(Sd.) Illegible,
Advocate
17.2.71.

[No. 6/76/70-LR.II.]

KARNAIL SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 23rd February, 1971

S.O. 1012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the following award of Shri T. Venkatadri, Retired High Court Judge, Plot No. 207, Anna Nagar, Madras-40, arbitrator in the industrial dispute between the employers in relation to the Administrative Body for Reserve Pool Workers, Madras Dock Labour Board, the Administrative Body for Listed Dock Workers, Madras and Food Corporation of India, Madras and their workmen, which was received by the Central Government on the 11th February, 1971.

BEFORE THE ARBITRATOR: SHRI T. VENKATADRI

In the matter of the Arbitration of the dispute between:

Representing Employer:

1. The Administrative Body for Reserve Pool Workers, Madras Dock Labour Board, Madras-1.
2. The Administrative Body for Listed Dock Workers, Madras 1.
3. The Food Corporation of India, Mount Road, Madras-2.

Representing Workmen:

1. Madras Harbour Workers' Union, "Bhagat House" Madras-1.
2. Madras Port & Dock Workers' Progressive Union, Madras-1.

AWARD

1. This reference to Arbitration was made in pursuance of an agreement between the Employers (1) The Administrative Body for Reserve Pool Workers, Madras Dock Labour Board, (2) The Administrative Body for Listed Dock Workers, and (3) The Food Corporation of India, and their Workmen represented by (1) The Madras Harbour Workers' Union and (2) The Madras Port & Dock Workers' Progressive Union, when disputes arose between them in regard to the implementation of the recommendations of the Central Wage Board for Port & Dock Workers at Major Ports on the wages and scales of pay.

2. It would be convenient for me to narrate the events that led to the appointment of the Arbitrator.

3. The Workmen represented by the Madras Harbour Workers' Union and the Madras Port & Dock Workers' Progressive Union are all working in the Madras Harbour. Otherwise, they are called "Dockers". In the early dates, the employers exploited the labour in the Docks by 'pick and choose', 'elect and reject' and 'hire and fire'. It was all casual labour. The conditions of the Docks were appalling. The employers were aggressive and exploiters and the Government was helpless in controlling the Dock Industry. It was in the year 1931 the Royal Commission on Labour recommended the Decasualisation of the Dock Workers with a view to securing as large a measure at regular employment as the nature of calling will allow. It was in the year 1948 an Act, was passed called the Dock Workers (Regulation of Employment) Act—Act 9 of 1948. This Act was virtually based on the U.K. Dock Workers (Regulation of Employment) Act, 1946 This Act provided for making a Scheme for ensuring regularity of employment in the Ports. It was under this Act various Schemes were notified from time to time to each Port and the Madras Dock Workers (Regulation of Employment) Scheme was notified in the year 1952. For administering the Scheme, there is a tripartite Dock Labour Board at each Port consisting of an equal number of members representing the Central Government, the Dock Workers, the Employers of Dock Workers and Shipping Companies.

4. After the implementation of the Scheme, there were a number of complaints both from the employers and the employees, namely that the Dock Labour Boards were not functioning properly, the discipline amongst the workers had deteriorated, their efficiency and output had gone down considerably resulting in delay in the turn-round of ships, cost of handling had increased and that the employer-employee relations had suffered. There was also the usual demand made by the workers that their wages, attendance money, minimum guarantee wages should be increased and the Dock Labour Board should provide for training and welfare facilities for workers and also pressed for other categories of Dock Workers to be brought under the Schemes.

5. This controversy and agitation led to the appointment of Vasist Committee consisting of Central Government's representative, Stevedores, Office-bearers of the Unions representing their workmen and the Administrative Officers of the Ports. It is not necessary to detail the recommendations of this Committee, but it is enough to state that the Vasist Committee made some important recommendations viz., the Government may suggest to the Port Authorities a suitable decasualisation scheme in respect of casual shore labour should be taken up. The Dock Labour Board should review the register and position in regard to anticipated demands and take suitable steps early to avoid employment of casual labour. Every worker should be given a weekly off on the 7th day if he has worked for six consecutive days and the off day should be staggered for daily as well as monthly workers so that the Dock work goes on normally on all days including Sundays. The question of making the off-day a paid day should be examined by each Dock Labour Board. The minimum number of days guaranteed for wages every month should be assessed annually on the basis of average employment during the immediately preceding 12 months according to the procedure laid down by the Committee.

6. It is on the basis of those recommendations that the original Scheme which was implemented in 1952 was further amended in the year 1956.

7. After the introduction of the amended Scheme in 1956, again there was agitation and controversy about the wages of the Dockers. It is a common fact that no wage revision took place from 1959, though the Minimum Wages Act of 1948, was notified to the Dockers also piece-meal for the Port of Madras. The minimum wage which was notified under the said Act was more or less the prevailing rate of wage in the Port concerned.

8. As the Dockers were not satisfied with the minimum wages, there was agitation in 1956 which led to the appointment of Shri P. C. Choudhry as Commission to enquire into the scales of pay and allowances.

9. In the year 1959, the recommendations of the Second Pay Commission was implemented to the Dockers also in the year 1961.

10. The Central Government thought that it was just and necessary to have a Committee to fix the wage structure for the Port Industry and it was in pursuance of this object, the Central Government constituted for the first time a Central Wage Board for the Port & Dock Workers at Major Ports. This Board had, as its Chairman a Judicial Member, and independent members representing the employers and members representing the Labour, namely, Hindusthan Mazdoor Sabha and Indian National Trade Union Congress. One of the gravemen of the charge of the Madras Harbour Workers' Union represented by their respected and revered leader Mr. A. S. K. is that the Madras Port was totally neglected and their Union—Water Front Federation—which is one of the oldest Organisations was completely ignored and not represented in the Wage Board.

11. This Committee was entrusted with the most difficult task of framing wage structure and pay scales for all the various categories of employees working in the Ports, including the Madras Port Trust and the Dock Labour Board who were working under the Scheme of 1956 read with Act 9 of 1948.

12. The Committee, representing the various interests such as employers employee, administrative officers and the Central Government spent considerable time in collecting information through questionnaires sent out by them, recording evidence, gathering datas, satistics of the various important Committees and made their recommendations after a period of five years, in the year 1969.

13. After the Report of the Committee was published, a Tripartite Conference was convened at New Delhi on the 3rd February, 1970, to consider and discuss the recommendations made by the Wage Board. The Tripartite Conference was attended by the representatives of the employers, workmen and Port authorities, including Madras. The Government while accepting the unanimous majority recommendations of the Wage Board observed:

> "Any existing anomalies regarding the pay scales of employees of various ports and also such other anomalies/difficulties that may arise in the course of implementation of the new wage structure evolved by the Wage Board will, in the first instance, be discussed informally between the parties and settled at the Port level. The Government will consider the question of setting up suitable bipartite or tripartite machinery for dealing with any issue that remain unresolved".

14. When the Madras Dock Labour Board was about to implement the recommendations of the Central Wage Board, the Madras Harbour Workers' Union and the Madras Port & Dock Workers Progressive Union pointed out anomalies—regarding the pay scales in the Madras Port and urged that it should be implemented according to their calculations. The Dock Labour Board and the Food Corporation of India, which is also an employer, did not see eye to eye with the calculations made by the two Unions. There was difference of opinion which subsequently resulted in a strike in the Madras Harbour for nearly 15 days. It is easy to bring the Dock Workers out on strike. All that was needed was for a Docker to go round the Docks shouting "All out" and warning their men off the ships and out they would come. The nature of their work and the uncertainty of their lives produced a common psychology of group loyalty which, though it created great solidarity, resulted in men's almost unquestioning support of any attack, real or imagined. The temperament and the tradition of the men, the long memories of the past helped to explain the persistence of industrial unrest. The Workers in the Port Trust, who were not parties and who were not aggrieved, joined in the strike, with the result that the work was paralysed in the Port for nearly 15 days.

15. The Ministry of Labour, Government of India, was set in motion. It called for a conference between the respective Presidents of the Unions and the Dock Labour Board. It was mutually agreed on May 16th, 1970, that an Arbitrator should be appointed by mutual consent of parties to decide the two Issues which were referred to in the Notification issued by the Government of India dated 22nd August, 1970, namely:

1. Whether the fitment of the Workmen concerned of (i) the Administrative Bodies of the Madras Dock Labour Board and (ii) the Food Corporation of India working in Madras Port should, in the light of the recomendations of the Central Wage Board for Port & Dock Workers at Major Ports be made as per the calcultions of the concerned employers or those of the Madras Harbour Workers Union and the Madras Port & Dock Workers' Progressive Union.

To what relief, if any, are the workmen entitled?

2. Whether the demand of the workmen under the Administrative Bodies of the Dock Labour Board, Madras, and the Workmen of the Food Corporation of India working in Madras Port for full wages inclusive of all components for 26 days in a month (exclusive of the weekly offs and the paid holiday) is justified as per the recommendations of the Central Wage Board for Port and Dock Workers at Major Ports.

To what relief, if any, are the workmen entitled?

NOTE: Neither of the issues will cover casual workers employed by the authorities mentioned in the issues 1 and 2 above.

16. It is in these circumstances that the Arbitrator was appointed under Section 10-A of the Industrial Disputes Act.

17. In accordance with the Notification issued by the Government of India, an agreement was entered into between the parties appointing me as Arbitrator to decide the above two Issues and to pronounce the Award within two months and if it is not possible, by consent of parties, the period would be extended from time to time.

18. The Proceedings in Arbitration came into existence on the 10th October, 1970. The respected and revered leader Mr. A. S. K. appeared for the Madras Harbour Workers' Union and the Learned Counsel Mr. Manivannan and Mr. Chidambaram appeared for the Madras Port & Dock Workers' Progressive Union. On the Employers side Mr. Dolia, Learned Counsel appeared for the Dock Labour Board and Mr. G. Ramaswamy, Learned Advocate and Additional Government Pleader, appeared for the Food Corporation of India.

19. Mr. Manivannan, Learned Counsel appearing for the Madras Port and Dock Workers' Progressive Union elaborately discussed, by citing copious decisions of the highest Court of our Country, about the scope of Arbitration and power of Arbitrator appointed under Section 10-A of the Industrial Disputes Act. An Arbitrator appointed under Section 10-A of the Industrial Disputes Act has all the attributes of a Statutory Arbitrator and the persuasive obiter of—Gajendragadker C. J., is that it would be appropriate to treat an Arbitrator as a Statutory Arbitrator and not as a Private Arbitrator.

20. The arbitration being a voluntary one by the parties of their own accord, the Arbitrator exercises quasi-judicial power and his decision has got the validity of affecting the rights *inter se* between the worker and the Management. Especially, an Industrial Arbitrator's powers are considerably wider, his enquiries can be spread over a large field so that he can decide the best way to find out a solution to bring to an end the dispute. An Industrial Arbitrator has got the powers either to extend the existing agreement or make a new one or create new obligations or modifications of the old one, if it is essential for keeping industrial peace and justice, and to protect legitimate Union activities and to prevent unfair practice and victimisation. In any event, an Arbitrator under Section 10-A is not a Tribunal because the State has not invested him with its inherent judicial power and the power of adjudication which he exercises is derived from the agreement of the parties. His position can be said to be higher than that of a Private Arbitrator (lower than that of a Tribunal). He may be described loosely as a Statutory Arbitrator.

21. Again, the process employed by Voluntary Arbitrator in an Industrial Dispute is a judicial process, not confined to administration of justice in accordance with the law, but he is entitled to confer rights and privileges on either party which he considers reasonable and proper, though they may not be within the term of any existing agreement. The process he employs is rather an extended form of collective bargaining and is more akin to administrative than to judicial functions.

22. Repeatedly the Supreme Court has laid stress upon the well-known passage of Ludwig Teller (Labour Disputes and Collective Bargaining—Vol. L.P. 536):

> "Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements".

23. The highest Court in India, further held that in appropriate cases Industrial adjudication may impose new obligations on the employer in the interest of Social justice and with the object of securing peace and harmony between the employer and his workmen and full co-operation between them.

24. Industrial adjudication does not recognise the Employer's right to employ labour on terms below the term of minimum basic wage. This, no doubt, is interference with the employer's right to hire labour, but social justice requires that the right should be controlled. But at the same time it is of utmost importance that the temptation to lay down broad principles should be avoided. There are no absolutes and no formula can be evolved which would invariably give an answer to different problems which may be posed in different cases on different facts. It is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour. It is always open to industrial adjudication to consider the conditions of employment of labour and to vary them, if it is found necessary, unless the employer can justify an extraordinary condition which carry conviction. The theory of 'Hire and Fire' as well as the theory of 'Supply and Demand' which were allowed free scope under the doctrine of Laissez faire are obsolate and no longer hold the field in constructing a wage structure.

25. In the past in the Dock Industry the employers engaged and exploited the labour from the open market. They had their own favourities of a particular Foreman to mobilise the labour for their work and the floaters and drifters were hovering around the Dock for the work. Those were the days where the Dockers were at liberty to go home without nothing or docks were open to any one. Their daily wages were not based on the modern conception of the Wages in the Industrial law. There was no convention; nor any practice nor any rule to regularise their wages. It was for the first time our Legislature has passed the Minimum Wages Act (9 of 1948) with the object of doing social justice to workmen prescribing minimum rates of wages. It was only after the Act was passed, minimum wages were notified piece-meal for the Port Workers from time to time 1951 to 1961. However, the statutory minimum wages notified by the Government were more or less the prevailing rate of wages in the Ports concerned.

26. The Learned Counsel Mr. Manivannan pointed out to me that there was neither a revision of wages nor increase in rates of their daily rate from 1959 till the present Wage Board was constituted. Even though the Dock Workers (Regulation of Employment) Act of 1948—Section 3. Clause (d) provided for the fixation of the rates of remuneration, hours of work, etc., in the Scheme to be

introduced in the respective Ports no machinery nor any rule was provided for the wages of these workmen except the implementation of the Minimum Wages Act and the Second Pay Commission's recommendations.

27. It was only in the year 1964, the present Wage Board was set up for the Port and Dock Workers. The Wage Board was asked to work out the wage structure in accordance with the recommendations of the Fair Wage Committee.

28. After a considerable period, they submitted the Report. It is just enough for my purpose to state the important recommendations of the Wage Board:

1. That the total minimum wage of an unskilled worker, i.e., Docker, at CPI No. 215 (1949:100) should be Rs. 202/- at Bombay, Calcutta and Madras.

2 The components of the total minimum wage are basic Rs. 100/- p.m. D. A. Rs. 72/- p.m., at all the Ports and C. C. A. Rs. 10/- p.m. at Bombay, Calcutta and Madras and H. R. A. Rs. 20/- p.m. at Bombay, Calcutta and Madras.

3. They proposed two fitment formulae one for the employees of Port Authorities, Dock Labour Boards and their Administrative Bodies and for employees whose pattern of present wage is similar to that of Port Authorities. The other is in respect of fitment of workers whose—pattern of present wage structure is different from that of the Port Employees. Both the formulae are subject to majority recommendations of the Board regarding D. A. and C. C. A. They further prescribed that the proposed prescribed amount called 'fitment money' be added to the present basic pay to determine the new basic pay. Employees' new basic is to be fixed at a step in the new scale and they are to be allowed their next increment in the revised scales on the due date next after the Board's recommendations come into force.

4. The Board also recommended that the increase in their revised emoluments is atleast equal to the fitment money recommended in their case.

29. Mr. Manivannan, Learned Counsel for the Madras Port and Dock Workers' Progressive Union took a definite stand that every Docker whether he is in the Reserve Pool or a Listed Worker or a worker employed by Food Corporation of India should be paid a minimum wage of Rs. 202/- even according to the recommendations of the Wage Board. The Wage Board in their Report at Page 263 states:

> "When it appeared that achieving unanimity was not possible, efforts were made to see if, under the circumstances, the labour members could agree to a reasonable minimum wage and it was ultimately possible to make them agree to a minimum wage of Rs. 202/- per month for the Ports of Bombay, Calcutta and Madras ....."

30. Even this Rs. 202/- recommended by the Wage Board, the Dock Labour Board wants to whittle it down by applying the principle of Minimum Guarantee for each category of worker, i.e., Reserve Pool Worker will be paid 21 days, Listed Workers for periods of 12 to 15 days and Food Grain Workers 18 days in a month.

31. Mr. Manivannan with considerable force advanced his arguments that the Wage Board was entrusted with a heavy and serious responsibility to work out a wage structure based on the principles of Fair Wages as set out in the Report of the Committee on Fair Wages, taking into account (i) character of the port undertakings and their obligations to provide adequate port facilities necessary in a developing economy, (ii) the need for uniformity in the rates of emoluments and benefits to employees doing similar jobs at various Major Ports, (iii) requirements of social justice, (iv) the need for adjusting wage differentials in such a manner as to provide incentives to workers for advancing their skill and (v) the effect of the wage structure so evolved on the cost of port services.

32. The Committee on Fair Wages has decided that a minimum wage must provide not merely for the bare sustenance of life but also for some measure of education, medical requirements and amenities. The Wage Board was aware that the Constitution of India enjoins upon the various States to enunciate policies calculated to raise the standards of living and to create a favourable climate for the purpose of happiness and for the development of human personality. Under the Directive Principles of the Constitution of India, the citizens should have not only adequate means of livelihood but also they should be entitled to equal pay for equal work. When the Constitution says 'Equal Pay', it means it should be

a living wage which should enable the male earner to provide for himself and his family not merely bare essentials of food, clothing and shelter but a measure of frugal comforts including education for children, provision against ill-health, requirements of essential social needs and a measure of insurance against the more important misfortunes, including old age.

33. The Wage Board decided to devise a wage structure which would be suitable in the circumstances of the Port and Dock Industry and which may not necessarily be on the pattern of the Pay Structure applicable to the Central Government Employees. Then the Wage Board began to consider what would be the minimum wage for the workers. The Wage Board collected figures from various ports of the then existing minimum wages, considered the recommendations of the National Nutrition Advisory Committee, 1965, the formula of Dr. Akroyd, the estimates of the 15th Indian Labour Conference with vegetarian and non-vegetarian diet schedule, a comparative analysis of the wages of the various industries in the country and the wages of the Port and Dock Workers and of those in the well-established concerns in Bombay, Calcutta and Madras.

34. After deliberations, discussions and dialogues between the Members of the Wage Board, finally the Board decided a reasonable minimum wage of Rs. 202/- per month for the lowest grade of worker which is made up of Basic Pay Rs. 100/-, D. A. Rs. 72/-, H. R. A. 16 per cent subject to a minimum of Rs. 20/- and C. C. A. 10 per cent subject to a minimum of Rs. 10/-. They have further observed that this minimum wage which was devised by them is equally applicable to all the Dock Workers not only in its totality but also its components *i.e.*, D. A., H. R. A., and C. C. A.

35. Then the Board recommended new scales of pay, fitment amount and payment of weekly off wages should be continued. While the Board devised new scales of pay, they suggested all the workers should get benefit of the fitment amount—an adhoc payment, appropriate to their scale over and above the present wages. The Board further devised a formula to arrive at the new basic pay to enable the concerned authorities to fix the workmen at the new scale of pay.

36. While working out this formula, the employers, *i.e.*, the Dock Labour Board the Administrative Body and Food Corporation applied the minimum days of guarantee for each category of worker. This is quite contrary to the recommendations of the Wage Board, as it would affect the basic concept that have been kept in mind, *viz.*, that the new basic pay is relative only to 26 days. The workmen are entitled to full basic wages for 26 days with all its components, namely, full D. A., full H. R. A., and full C. C. A., including 4 weekly offs as each component of the minimum wage is guaranteed amount; especially H. R. A. whether he works for full 26 days or the minimum guaranteed days, he must be paid in full as he is compelled to reside throughout the month in the City and the C.C.A. which is intended to compensate the high cost of living in the City should also be paid for 26 days. The Wage Board also further observed that the minimum increase that a worker must get over and above his old basic pay should at least be the fitment money recommended in each case.

37. Mr. Manivannan, Learned Counsel for the Madras Port and Dock Workers' Progressive Union developed his argument that though the Wage Board was entrusted with the responsibility for fixing the wage structure on the basis of the various Conferences, Reports, etc., they have recommended only the Minimum Wage.

38. Now, it has been practically settled that in the evolution of wage structure, there are various categories of wages, namely;

Minimum Wage,
Fair Wage,
Living Wage.

39. It is very difficult to define or even describe correctly the contents of 'living wage', 'fair wage' or 'minimum wage'. In a developing country, the contents of these expression also expand and vary. The amount of 'living wage' in money will vary as between trade and trade, between locality and locality. Though the political aim is 'living wage', our wage structure has, at best reached the lower level of 'fair wages' though some employers are paying much higher wages than the general average. Chief Justice Subba Rao observed that prosperity in the country would help to improve the conditions of labour and the standard of life of the labour can be progressively raised from the stage of 'minimum wage' passing through the need-based wage, fair wage and then to living wage.

40. Justice Hidayathulla said a fair wage is between the minimum wage and living wage. A fair wage is thus related to fair workload and the earning capacity. It is a step lower than the living wage. The concept of fair wages, therefore, involves a rate sufficiently high to enable the worker to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned. Minimum wage is at the bottom of the ladder which the employer of any industrial labour must pay in order to be allowed to continue in industry. Above the fair wage is living wage—a wage which will maintain the workmen in the highest state of industrial efficiency which will enable him to provide his family with all the material things which are needed for their health and physical well-being enough to enable him to discharge his duties as a citizen. Whoever may be the employer, he has to pay a reasonable wage to the employees.

41. Mr. Manivannan has stressed his point that though the Wage Board was constituted for fixing fair wages, they have deviated from their course and adopted minimum wages after considering the paying capacity of the employers. It is now practically settled that for paying minimum wage, the capacity of the industry should be ignored and should be eliminated. The Wage Board after having fixed the minimum wage, taking into consideration the capacity of the employers to meet the expenses of the minimum wage, the Dock Labour Board, the Administrative Body and the Food Corporation of India are bringing down even this minimum wage to the lowest figure to the best of their advantage which is totally inconsistent with the recommendations made by the Wage Board.

42. Mr. Chidambaram, Learned Counsel, supplemented the arguments of his colleague Mr. Manivannan, by saying that it was the intention of the Wage Board that every worker in the Dock, to whatever category he may belong, should be paid a sum of Rs. 202/- p.m., i.e., the desired level of wages. The Wage Board coined a formula in which they have applied the natural monthly days of 26 to find out the basic wage of each category of worker. After finding out the basic wage, then they should be given full D. A., full H. R. A., and full C. C. A. After summing up all these figures, then each worker will get the 'desired level' of the Wage Board and also satisfy the four conditions as explained by Mr. Manivannan.

43. He demonstrated his arguments with the help of a black board by applying the formula to find out the basic wage, according to him and according to the Dock Labour Board, i.e., the Employers. After comparing both the figures, he said that the figures arrived at by the Dock Labour Board by any stretch of imagination will not satisfy the four conditions as stated by their Union in Para 20 of the counter-affidavit.

44. He took the example of Reserve Pool Workers. The guaranteed minimum is 21 days. BEFORE the recommendations of the Wage Board, a Mazdoor was getting:

		Rs.
A basic wage of for 21 days	Rs. 4 12 per day. Rs. 4 12 × 21	86 52
Attendance allowance	Rs. 1·75 × 5	8·75
Full D.A.		98·00
Interim Relief		11·80
	TOTAL	205 07

The Wage Board recommended the Existing emoluments for the purpose of fitment should be determined by multiplying the daily rate of basic pay by 26 and adding thereto, the monthly D. A., and I. R., and the appropriate fitment money and then the basic pay to be determined by applying the appropriate formula.

		Rs.
Daily basic	Rs. 4 12 × 26	107·12
D.A.		98·00
Interim Relief		11·80
Fitment money		40·00
	TOTAL	256·92

The formula to be applied :
"E" is equal to $\frac{(A-D)\times 100}{100 \text{ plus C. plus H.}}$

"E" is to find out the new basic after applying the formula.

"A" is the total emoluments.

"D" is D.A.

Total emoluments existing at the time of the award.

"A" is Rs. 256·92 (minus)

"D" is Rs. 98 co plus Re. 1/-.

i.e.,

$$\frac{\text{Rs. } 256\cdot92 - 99 \times 100}{100 \text{ plus } 16 \text{ plus } 10}$$

equals to Rs. 125 33 or Rs. 126/-.

H's Scale of Pay is Rs. 110—2.50—120—3—147

	Rs
Therefore "E" is Rs. 126/- (*i.e.*, for 26 days). Therefore for one day	4·85
According to D.L.B. the Basic is Rs. 4·85×21	101·85
According to the Union	126·co for 26 days.
Mr. Chidambaram presumes D.L.B. will give atterdence money Rs. 1·75×5	8·75
In all, D.L.B., will give Rs.	101·85 plus 8·75
	110·60

Now compare the figures :

	Existing	According to D.L.B.	New	According to Union
	Rs. P.	Rs. P.	Rs. P.	Rs. P.
Basic Rs. 4·12×21	86·52	101·85		126·co
Attendance allowance Rs. 1·75×5 . . .	8·75	8·75		..
D.A.	98 co	99 00	(No. dispute)	99·co
Interim Relief . . .	11·80	..		..
H.R.A.	..	20 16	(16%)	20·16
C.C.A.	..	12·60	(10%)	12 60
TOTAL .	205 07	242·36		257·76

45. Thus, there is difference between the calculations made by the Dock Labour Board and the Union, of about Rs. 25/- in the basic pay. Mr. Chidambaram says that the Dock Labour Board cannot calculate wages only for 21 days, when the formula itself applies that they should get 26 full days.

46. His 2nd objection is that the scale for this category is: Rs. 110—2 50—120—3—147 and therefore, according to him, the minimum in the time scale should be atleast Rs. 110/- and not Rs. 101 85p.

47. His 3rd objection is: Previously he was getting Rs 205—07 p. The new emoluments according to the Dock Labour Board is Rs, 242—36 p. Therefore the difference is Rs. 37—29 p. The Wage Board has suggested that the total increase which a worker must get over and above his actual existing monthly emoluments should be atleast the fitment money referable to that grade, which, in the instance case is Rs. 40/

48. His 4th objection is—inconsistency in the D. L B.s calculation. For the purpose of calculating the H. R. A., and C. C. A, they have taken the basic pay as Rs. 126/- which was calculated for 26 days, whereas for purposes of 'basic pay' they have taken for 21 days.

49. On the other hand, if the basic pay is Rs. 126/- as claimed by the Union, he will not only get Rs. 126/- but also H. R. A. Rs. 20-16 p and C. C. A. Rs. 12-60 p and D. A. Rs. 99/- (about which there is no dispute), in all Rs. 257-76 p. which will satisfy all the conditions laid down by the Wage Board.

50. The calculations made by the Dock Labour Board is self contradictory. For the purpose of D. A., C. C. A., and H. R. A., the new basic pay is arrived at on the basis of 26 days and for purposes of basic pay actually the wage is multiplied only by the days guaranteed, namely 21.

51 Therefore, he appealed to the Arbitrator that the calculations made by the D. L. B., is quite contrary to the recommendations made by the Wage Board. His contention is that the Wage Board has defined that full 26 days must be given to each category of worker in working out the formula to arrive at the new basic pay. In other words, he said for all category of workers, irrespective of the minimum guaranteed days, if 26 days are given plus 4 days off, the desired level of the Wage Board is not only reached, but the conditions laid by them would be completely satisfied.

52. Mr. Manivannan, further contended that either the D. L. B. or the Administrative Body cannot circumvent the minimum basic wage of Rs. 202/- for all the Dock Workers by putting forth that there is a Scheme—The Madras Dock Workers (Regulation of Employment) Scheme, 1956, and the Madras Unregistered Dock Workers (Regulation of Employment) Scheme for Reserve Pool Workers and Listed Workers which does not provide for 26 days work for all the Dockers but only minimum days of guarantee—21 days for the Reserve Pool Workers and 12 to 15 days to Listed Workers. The Scheme is framed under the Act 9 of 1948, and are like Standing Orders and therefore they have the force of Standing Orders. The Scheme is not sacrosanct because it has the same force as Standing Order. The Scheme under the Act lays down broad policy regarding the terms and conditions, wages, minimum employment. The Scheme is merely ministerial because it works out the day to day administration. The Scheme and the Standing Orders have the same legal status because both are framed under the Act. If Standing Orders are modified, altered, varied in an Industrial Adjudication, equally an Arbitrator, exercising powers under Section 10-A would have the jurisdiction to modify the Scheme. Where the Standing Order can be unilaterally modified, the Arbitrator can equally alter the Scheme without reference to the employer or Dock Labour Board or the Administrative Body. If the Central Government is authorised to modify the Scheme, the Arbitrator appointed under Section 10-A has got the jurisdiction to change the Schme. If the Industrial Court can modify the Standing Order despite the fact that it has got the statutory force, equally the Arbitrator can alter the Scheme which is akin to the Standing Order. When the Central Government has accepted the recommendations of the Wage Board in full, they could have modified the Scheme, but the Central Government allowed the contesting parties to have an Arbitrator. The jurisdiction of such an Arbitrator would be wider and can change the Scheme to render justice. The Award of the Arbitrator will govern new terms and conditions of employment and to that extent the Scheme will be modified.

53. The pith and substance of Mr. Manivannan's argument is that the Scheme which provides minimum guaranteed days of work to both Reserve Pool Workers and Listed Workers will not stand in the way of granting the minimum basic

monthly pay of Rs. 202/- to the lowest category of workers as recommended by the Wage Board themselves.

54. The Scheme is like a contract of employment which regulates the conditions and terms of employment. The moment a Docker's name is entered into the Register maintained by the Dock Labour Board for Registered Pool Workers and a docker's name with the Listed, they all become full employees. All the dockers whether they are in the Reserve Pool or Listed Worker under the Administrative Body should be paid Rs. 202/- which is the minimum wage decided by the Wage Board.

55. Mr. Dolia, the Learned Counsel for the Administrative Bodies reminded me of the Tripartite Conference where the majority of the recommendations of the Wage Board was accepted by the Government and to any existing anomalies or difficulties which may arise in the course of implementation of the new wage structure evolved by the Board to be discussed informally between the parties at port level, failing which suitable machinery may be adopted to settle the dispute. Thus, the dispute before the Arbitrator is in the form of an agreement entered into between the rival parties.

56. It is in the agreement the dispute is referred to the Arbitrator, giving him jurisdiction to decide the specific points of dispute. The Arbitrator cannot enlarge the scope of his jurisdiction beyond the area of dispute to hear and consider the grievance of the parties; otherwise it would become another Wage Board. He pointed out that there are general provisions in the Industrial Disputes Act—36-A and Section 10(4) which provides that if there is any doubt as to the interpretation of any portion of the Award or Settlement, the appropriate Government may refer the question to such Tribunal as it thinks fit.

57. In short, Mr. Dolia contended that the Arbitrator cannot add, subtract or modify the recommendations of the Wage Board as accepted by the Central Government. The only question that the Arbitrator has to decide is whether the mode of implementation of the Wage Board's recommendations by the Administrative Bodies and Food Corporation is correct or not.

58. Mr. G. Ramaswamy, appearing for the Food Corporation of India supported the contention of Mr. Dolia that in construing the terms of reference and in determining the scope and nature of the points referred to an Industrial Tribunal, the Court must look at the order of reference itself. To support this proposition of Law, he cited 1959—Supreme Court, 1191. In another decision reported in 1967—I—L.L.J., Page 423 again Their Lordships held that when a matter was referred to a Tribunal, the Tribunal must confine its adjudication to the points of dispute referred to it and matters incidental thereto. In other words the Tribunal is not free to enlarge the scope of the dispute referred to it, but must confine its attention to the points specifically mentioned and anything which is incidental thereto. Again, Their Lordships of the Supreme Court warned the Tribunal that they should ascertain the real dispute between the parties, narrow the area of conflict and to see that where the two sides differ and not to fly off at a tangent to reach any conclusion that they think a just and proper—1956 S.C.231

59. An Arbitrator in an Industrial Dispute while adjudicating upon a dispute cannot arrogate to itself powers which legislatures alone can confer or do something which the legislature has not permitted to be done and no Tribunal has jurisdiction on the basis of its conception of social justice to ignore it.

60. Mr. G. Ramaswamy further contended that the scope of the jurisdiction of the Arbitrator is a very limited one under Section 10-A when compared to the reference under Section 10(4) which is a wider one.

61. After consideration of the respective contentions of the Learned Counsels, I feel that my jurisdiction is a limited one The present dispute arises out of the recommendations made by the Wage Board. The majority of recommendations have been accepted by the Government. The dispute arose between the parties in Madras Port when implementing the recommendations of the Wage Board to the Wages and Scales of pay. The parties by consent have referred the dispute for adjudication on the two issues as notified by the Government of India.

62. I am not able to agree with the contention of the Learned Counsel Mr. Manivannan that I can either alter, modify, vary of change the wage structure of the Wage Board. I cannot create any new obligations or new terms of employment or impose any fresh conditions on the employers. My only task is to decide the two issues notified by the Government of India on the basis of the recommendations of the Wage Board.

63. It would be convenient to deal with the 2nd Issue *viz.*, whether the demand of the Dockers to claim 26 days wages is justifiable on the basis of the recommendations of the Wage Board.

64. The workers belonging to these two Unions are all working in Madras Harbour. There are various categories called Reserve Pool Workers under the Dock Labour Board, un-registered Listed Workers under the control of the Administrative Body. There are workers working under the Food Corporation of India. All these workers are familiarly known as Dockers.

65. Before I consider the Issues, I would like to trace the history of the Dock Labour and its unrest.

66. It was a historical fact in the Ports of London "Dockers" were the poorest of the poor—the flotsam and jetsam of the waterside. They were unorganised, despised even by their fellow workers, without hope or craft. They slept in the fo'c'sles of empty ships and subsisted on scraps of mouldy biscuits left over by their hard-bitten crews, were subjected by sub-contractors—often more brutes than men—to work with rotten plant and defective machinery and left to perish in crippled destitution and misery when their limbs had been mangled in some squalid accident on the dock-side. In the frantic competition for freights, they could scarcely ever look for more than two days' continuous employment in a month.

67. It was the fiery eloquence of one of their member Ben Tillett made an unheard of demand that their labour should be hired at not less than 6d. an hour. When it was rejected by the Dock-Owners, the Docks were closed for two months and the Dockers won the public sympathy by their starvation, and public subscription 50,000£ in those days. Dock-Owners gave the way. Not only the Dockers won, but a General Union of unskilled Labour—The Dock-Wharf River-side Labourers' Union had been founded by Ben Tillett, a Docker with the 'gift of Oratory and complete dedication' supplemented by the drive, doggedness and astuteness of Ernest Bevin, himself a Docker who produced enough discipline needed among the men to force and maintain a Union strong enough to exert a continuous control over them. It took a long time in England to produce a Scheme for the hiring of Dock Workers. It was Ernest Bevin in 1918 who drafted a Scheme for the maintenance or for a Guaranteed Minimum of weekly wage as well as for Registration. Thus, Ernest Bevin was the fore-runner of the theory of de-casualisation in the history of Dock Labour.

68. It took a long time in England to produce a Scheme for the control of hiring of Dock Workers. More than fifty years cover the span from the General Strike of the 19th Century (1889) to 1941 when Ernest Bevin as Minister of Labour established a Scheme of Decasualisation.

69. The basic elements of a decasualisation for the Dock Industry are:

(a) Restricted supply of men involving compulsory registration and a closed administered register;

(b) Centralised hiring which pre-supposes a maximum of mobility or opportunity to get men to the places where their services are to be used;

(c) Pre-determined selection.

70. It was in the year 1941 Essential Work (Dock Labour) Order was issued under the Defence (General) Regulations with the object of retaining an adequate efficient and mobile labour force for the rapid turn round of ships and clearance of the Ports. This order provided for the submission of decasualisation scheme from each Port to the Minister for approval based upon a Modern Dock Labour Scheme agreed to by the Unions and Employers' Organisations. This called for the creation of Dock Labour Boards to register and allocate labour. Subsequently, the Dock Workers (Regulation of Employment) Act, 1946, was enacted. After this act was passed, National Dock Labour Board was formed to work out towards employment stabilisation in an Industry, especially sensitive to fluctuations of trade. Even after the introduction of the Act, Schemes, and National Dock Labour Board, still there were difficulties in working out the Scheme, obstacles from the Union, obstruction from the Employers. Number of Enquiries were made, various Committees were formed, Reports were called about the efficiency of Working in the Docks under the Scheme. The last of such Report on the Committee of Enquiry was made by the Rt. Hon'ble Lord Delvin in 1965.

71. Periodically the Dockers in the World have been the subject of attention. Their lives and practices in hiring have engaged the attention of many people.

The situation necessarily has been complex. The Docker has seemed to be simultaneously a problem of Industry, Social Service, Poverty and unrest. Much attention has been always given to the casual conditions of Dock Labour and employment. The working conditions in the Docks have been subject to private investigation, public enquiry for a long period. After gathering dust for a long time, these studies eventually yielded results in the shape of Legislative Reforms.

72. Finally, the last decade has seen a revolution of Dock Labour Employment brought about by the adoption of Schemes of Decasualisation.

73. It is with the object of giving effect to decasualisation, Act 9 of 1948 was passed called the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) in our Country.

74. The Act provides Schemes for registering Dock Workers and Employers with a view to ensuring greater regular employment of Dock Workers whether registered or not. In fact, the principle of decasualisation for the first time was introduced by this Act. The aim of decasualisation is mainly to eliminate casual labour.

75. While decasualisation has thus removed some of the burdens of trade fluctuation from the shoulders of the worker and has eliminated the brutal struggle for jobs, the costs of the system have been transferred to the Emp oyers and in part to the Nation.

76. The aim of decasualisation Schemes are first to reduce the unwieldy labour force to manageable proportions by some Scheme of Register of Dockers and Second to ensure an adequate maintenance for recognised workers on those days when they seek work at the Docks but cannot find it. These ends had been recognised as desirable by far-sighted employers and trade union leaders before the Dock Labour Scheme was brought into operation. Generally, the dock work itself is essentially a dirty, exposed and dangerous occupation and in the course of his working life the Dock Worker faces a number of unusual hazards.

77. The Schemes of decasualisation itself were not popular with the Dockers themselves who feared that while some men would get more work, others get less or none at all, and would be depriving of their livelihood. The system of employment which the Scheme designed to introduce and to operate cannot be effective unless new relationship can be established between persons in various positions on the Dock side that are conversant with the concept that underlie it. The idea of the Scheme is to eliminate the old idea of the 'Employer' as one who seeks to get the most effort out of his worker at the least cost to himself and that of the 'Worker' as one who attempts to do as little work as possible for as much money as he can get, to be re-placed by new ideas about the responsibilities of these members of the Dock Labour Board and Trade Union Officers as well as about the responsibilities of the workers themselves.

78. In Madras Port, a Scheme called the Madras Dock Workers' (Regulation of Employment) Scheme 1952 was framed, which was subsequently amended in 1956 after the Vasist Committee had submitted its Report. The Scheme contemplate the creation of Dock Labour Board with an Administrative Body to carry out the day-to-day administration of the Scheme. In Madras, the Madras Stevedores Association is the Administrative Body for the purpose of carrying out the Scheme and its Chairman is a member of the Dock Labour Board.

79. The main object of the Scheme as contemplated under the Dock Workers' (Regulation of Employment) Act, 1948 (9 of 1948), is to create a Dock Labour Board charged with the definite purpose of administering the scheme and for its over-all administration. The functions of the Dock Labour Board include all activities and operations necessary to promote the object of the Scheme, *i.e.*, to ensure greater regularity of employment for Dock Workers so that work can be effectively performed. Hence, it is charged with seeking to ensure the full and proper use of Dock Labour as well as to facilitate the rapid and economic turn about vessels and speedy transit of goods through Port. To this ends it is responsible for regulating the recruitment and entry of Dock Workers into and their separation from the Schemes as well as the allocation of Registered men to work for the Registered Employers. It controls the size of the Dock Worker register through periodic review of the needs of the Port and sets the maximum strength or sanctioned strength for each register. In maintaining control over the size and composition of the labour force, it is expected that a sufficient number of workers will be available for the current needs. In practice, the Dock Labour Board is dependant, to a large extent, upon the knowledge of its members who are both the representatives of Employer and Employee. The Dock Labour Board,

has, inspite of difficulties, made satisfactory progress. It is mainly responsible for the Mechanics of hiring or engagement of the men. Actually, the men are technically in the employ of Dock Labour Board when they enter the Controls and only pass into employment of the individual employers once engagement has been consummated.

80. Lord Delvin in his Report says while dealing with Dock Labour Board "that there is a division unknown to Industry generally between "the holding employer" *i.e.*, the Board and the "Operational Employer" who actually makes use of the man's services" (*i.e.*, Stevedores).

81. The Dock Labour Board sets the levies and collects them. It also collects records of the men's daily earnings from the employers and keeps the employment records of each worker. In turn, it bills the employers and delivers the pay packet to the men each month. It is in charge of payments. The Dock Labour Board is directed to make satisfactory provision for the training and welfare of the Dock Workers including Medical Services, Labour and Management within the frame-work of the Scheme. It may remove a man's name from the Register at his own request or in accordance with the provisions of the Scheme. It is responsible for the allocation of the Registered Dock Workers who are available to the Registered Employers. In this function it has to make every effort to supply men accustomed to the employer, his operations and cargo, to act as an agent for the Employer. The obligations of the Registered Dock Workers are specified in the Scheme. He is deemed to have accepted the obligations by the fact of the registration and when in the Pool and available for work he is in the employment of Dock Labour Board. It is an implied condition that the contract between a Registered Worker and Employer includes the rates of pay and conditions of work confirming to the collective agreement in force.

82. The Scheme provides minimum guarantee in the case of Registered Pool Workers—21 days and in case of Listed Workers it varies from 12 to 18 days.

83. The Scheme further provides for attendance money, on days he was not given work, disappointment money when he was asked to wait for 2 hours in expectation of the work available to him, but when the work was not given. If he is made to stay after 2 hours he is entitled to get full wages.

84. Equally the Scheme provides that if an employer fails to carry out the provisions of the Scheme his name may be removed from the Employers' List. Similarly, the Dock Worker is punished if there is misconduct or breach of any one of the conditions of his service.

85. The cost of operating the Scheme is defrayed from payment which the Registered Employers make to Dock Labour Board The levy is a percentage of Gross Wage but the Board has the power to fix different percentage for different categories of work or workers. It is to be noted that the levy covers many items in addition to the payments for attendance. The Board has a complete record of earnings for each man and information on the distribution of earnings would be of great value.

86. The position of a Dock Labour Board is humourously described in a hand book called "THE DOCK WORKER" published by the University of Liverpool as:

"Too many hands in the Pudding";

"The present system is much too complicated. We cannot get to grips with employer anymore";

"Now that the workers have got power, it would be better to sort things out with the Company direct and not bother about the Dock Labour Board. We can do better for ourselves";

"The Board is a Giant Octopus stretching out its tentacles to frustrate and bewilder them".

87. These remarks show that neither those who approved of the Board nor those that disapproved of it, regarded it in the kind of way that Industrial Workers normally regard the employer. All saw it as a buffer, but whereas some saw it as a protecting buffer; others saw it as an obstacle. But everybody engaged in the Dock Industry realised that the Dock Labour Board is the best medium to stress the employers that the opportunity for regular-employment should be made available to all men. Dock Labour Board is the best for the application of the principle of decasualisation. To-day Dockers are not forgotten men of water front.

88. Equally, there is a separate Scheme for Listed Workers which came into effect from 1968 called the Madras Un-registered Dock Workers (Regulation of Employment Scheme). This Scheme is intended for Dock Workers specified in the Schedule—Workers engaged on shore in handling of coal, ore and chipping and painting. The workers from each pool is allotted work in rotation. The minimum days of guarantee for Ore Worker is 15 and for Coal and Painting and Chipping Worker 12 days in a month. These workers are under the control of the Administrative Body (Madras Stevedores Association) whose Chairman is a member of the Dock Labour Board.

89. The Scheme the Madras Dock Workers (Regulation of Employment) Scheme, 1956, was made under Section 4 Clause (1) of the Act 9 of 1948—called the Dock Workers (Regulation of Employment) Act, 1948—(9 of 1948). Section 3 (2) (d) says:

> "for regulating the employment of dock workers, whether registered or not, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof";
>
> "for securing that, in respect of periods during which employment, or full employment, is not available for dock workers to whom the scheme applies and who are available for work, such workers will, subject to the conditions of the scheme, receive a minimum pay".

90. It is a Statutory Scheme. The Scheme cannot be modified except by the procedure laid down in the Act itself. The Act provides that only the Central Government by Notification in the Official Gazette can amend, vary or modify the Scheme.

91. Recently, the Central Government notified a Scheme, after the recommendations made by the Central Wage Board, on the 1st June, 1970, called the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970. This is more or less akin to our Scheme of 1956.

92. Therefore, the Scheme is a 'delegated legislation'. This delegation cannot be further delegated either to an Industrial Tribunal or to an Arbitrator or to an Adjudicator. The Scheme can be equated to a Statutory Rule framed by an Authority under the Rule and can be amended only in the manner prescribed under Section 4.

93. G. P. Singh on PRINCIPLES OF STATUTORY INTERPRETATION says at Page 492:

> "When delegation of such a power is permitted by a statute and is made, the delegation is absolute but the delegate may yet remain in the administrative control of the authority delegating the power. Even a discretionary administrative power entrusted by a statute to a particular authority cannot be further delegated except as otherwise provided in the statute". The principle against sub-delegation is reasoned from the maximum *'delegate non potest delegare'* and the correct rule of construction is stated to be that a discretion conferred by statute is *prima facie* intended to be exercised by the authority on which the statute has conferred it and by no other authority...."

94. The Scheme is based more or less on the Scheme framed by the U.K. Dock Labour Schemes for Dock Workers.

95. When a question arose before the House of Lords, Reported in 1956—3—All England Reporter—page 939 on the status of the Scheme, Their Lordships expressed that it is a Statutory Scheme of employment and one of its objects was to do away with the casual employment and another to secure regular employment of labour.

96. The object of the Scheme The Madras Dock Workers (Regulation of Employment) Scheme, 1956 are to ensure greater regularity of employment for Dock Workers and to secure that an adequate number of Dock Workers is available for efficient performance of Dock Work.

97 The principle enunciated in 1956—3—All England Reporter—Page 939, has been followed in 1970—I—L.L.J. 31, where the Supreme Court held while dealing with the question whether the Dock Labour Board or the Stevedores are liable to pay bonus. The Supreme Court held that the Board is a Statutory Body charged with the due administration of the Scheme, the object of which is to ensure greater and regular employment for dock workers and to secure an adequate number of

workmen are available for the efficient performance of the dock work. The Board is an autonomous body, competent to determine and prescribe the wages, allowances and other conditions of service of the Dock Workers. The purport of the Scheme is that the entire body of workers should be under the control and supervision of the Board. The registered employees are allocated—monthly workers by the Administrative Body and the Administrative Body supplies whenever necessary the labour force to the Stevedores from the Reserve Pool.

98. Therefore, the Statutory Scheme cannot be treated like Standing Orders of an Industrial Establishment as contended by Mr. Manivannan. The Standing Order is like Bye-law, whereas the Scheme is like a Statutory Rule framed by an authority under the Act and can be amended only in the manner prescribed under Section 4. The Scheme is not a Bye-law. The Scheme cannot be modified in an industrial adjudication or by an arbitrator.

99. In the High Court of Patna in 1962 when a reference was made by the Central Government for the amendment of service conditions of the Workers governed by the Calcutta Dock Workers (Regulation of Employment) Scheme, it was held that the Tribunal has no jurisdiction to amend the Scheme.

100. Considering all these legal decisions and the principles laid down by the various Courts and as the Law is clear, I am of the opinion that the Scheme framed under Act 9 of 1948 cannot be treated as a Standing Order and it cannot be modified, varied or changed or altered except by the procedure laid down in the Act.

101 For the first time, the Government of India constituted a Wage Board—a Central Wage Board for the Port & Dock Workers at Major Ports—to work out the wage structure based on the principles of Fair Wages as set forth in the Report of the Committee on Fair Wages. The Committee consisted of Mr. Davey, Judicial Member, independent members, members representing employers and representing Labour.

102. One of the characteristic features of the dock industry has been the chronic complaints of dock workers about their wages and working conditions. The substance of these complaints has been generally admitted as has also in particular the unfortunate social consequences of the system of casual employment till the system of decasualisation was introduced into the Ports. Even after the decasualisation, the Dock Workers expressed their hostility by complaining about the wages and working conditions. Equally, the employers tend to stigmatise the dockers as irresponsible and of making complaints either exaggerated or unfounded. In the dock industry it is, in general, difficult to measure out, with any precision, and it is also impossible to standardise each job to ensure that the conditions under which work is performed remain the same from hour to hour. The piece-work system is complicated and difficult to understand because the dockers themselves were not able to calculate their own earnings. Therefore, the earnings of the dock workers reflect only indirectly the length of time he spends on docks or the amount of effort he puts into the work while he is there. The main bulk of the complaint relating to the specific defects in the wage structure reflects the anxiety which resulted from the fact that the basic wages alone were not high enough to maintain what dock workers regarded as a satisfactory—standard of living. The complaints of the dockers in regard to the defects in the wage structure cannot be—regarded as unreasonable or without solid foundation. It must be borne in mind that the anxiety and insecurity which arise as a result of the difference between the earnings from month to month, is an unavoidable outcome of the way in which dock work is organised. Therefore, the dockers are justified in their complaints of the defects in the wage structure, but is unreasonable in so far as they —criticise the inevitable results of a solution to which they themselves lend their support and which they do not wish to see altered. The discontents from which the dock workers suffer about their wages and working conditions are likely to continue until a fundamental reorganisation can be carried out. This, however, would be impossible without a very large measure of goodwill on the part of all concerned which seems hardly likely to be forthcoming.

103. The fixation of wage structure is the most difficult task that The Wage Board had to tackle. In our country there are three categories of wages, *viz.*, minimum wage, living wage and fair wage. It is very difficult to define or even to describe accurately the contents of minimum wage, living wage and fair wage.

104. Justice Das Gupta of the Supreme Court in Hindustan Times case briefly and neatly defined the three concepts of Minimum wage, Fair wage and Living Wage in the present day context as follows:

> "At the bottom of the ladder there is minimum wage which the employer of any industrial labour must pay in order to be allowed to continue

in industry. About this is the fair wage which may roughly be said to approximate to the Need based minimum in the sense of a wage which is adequate to cover the normal needs of the average employee regarded as human being in a civilised Society. Above the fair wage is the living wage—a wage which will maintain the workman in the highest state of industrial efficiency which will enable him to provide his family with alll material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen".

Similarly Justice Hidayatullah remarked:

"Our political aim is living wage, though in actual practice living wage has been an ideal which has eluded our efforts like an ever receding horizon and will so remain for sometimes to come".

The Learned Judge further observed:

'Fair wage lies between the minimum wage which must be paid at any event and living wage which is the goal".

In other words Fair wage is a mean between living wage and the minimum wage.

105. In fixing the Wage structure which is always a delicate and difficult task, a balance has to be struck down between the demands of social justice which requires that the workmen should receive their proper share of the National income which they help to produce, with a view to improving their standard of living and the depletion which every increase in wages matters in the profits as this tends to divert capital from the industry into other channels thought to be more profitable. Again, the fixation of wage varies between region and region, industry to industry and to establishment to establishment. In construing a wage structure in a given case, industrial adjudication does take into account, to some extent, consideration of right and wrong, propriety and impropriety, fairness and unfairness. It is a long range plan, and so, in dealing with this problem, the financial capacity of the employment must be carefully examined. The Tribunal has to consider the minimum wage, the capacity of the management to bear the burden of the increased wages and then to correlate the increment to the minimum wage in relation to the capacity of industry.

106. The Supreme Court has held in Indian Express Newspaper case that in the fixation of rates of wages which includes fixation of wage scales, essential circumstances to be taken into account, except in cases of bare subsistence or minimum wage which an employer has to pay irrespective of such capacity, the capacity of the employer to be considered on industry-*cum*-region basis after taking a fair cross-section of Industry and a proper measure for gauging the capacity to pay should also be taken into account.

107. In the latest case reported in 1970—2—L L J., Justice Valdialingam held, while considering the recommendations of the Central Wage Board for Jute Industry, that the Wage Board did not follow industry-*cum*-region basis, did not consider the financial, capacity of the employer to bear the additional financial burden and suffered from fatal infirmity.

108. Mr. Manivannan, Learned Counsel, said that the Wage Board fixed 'minimum wage' after considering the capacity of the employer. But on looking into the Report of the Wage Board Recommendations—page 222—para 5.2—they say:

"The minimum wage we have recommended for the Port and Dock Workers is not subsistence wage"

in other words it is a 'need based minimum wage' and not a 'minimum wage'.

109. Again the Report at para 7.1.34 (Page 347) says:

"It was clear to us that the need based minimum wage or the one which approximates to it is not a subsistence wage and when it is under consideration the capacity of the Industry to pay cannot be ignored. In our attempts to evolve a wage structure based upon this concept (i.e., concept of need based minimum or nearer to that) we have been conscious of the paying capacity of the Port Industry and this aspect has received our highest attention in the course of our deliberations".

110. For 'need based minimum wage' the Report of the National Commission on Labour at page 237 says: the capacity to pay need based minimum wage has to be considered.

111 The same report at page 198—para 14.36 under the Heading "Port and Dock Workers" says:

> "During the last decade or so, the earnings of port and dock workers have been increasing in all the major ports.." The rise is the result of many factors, the most important being greater work availability and increase in dearness allowance rates recommended by various pay fixing agencies. Cash benefits like holiday wages and paid-weekly off, which have been introduced from time to time, have also been responsible for the rise in total earnings. "Among the port and dock workers, labour engaged by stevedores earn better; the nature of their work, working inside the holds of a ship, entitles them to a higher wage rate. Also, among the stevedores labour, there is preponderance of piece-rate workers which explain their higher earnings".

112. Therefore, the Wage Board in evolving the wage structure for the Dock Workers, they have fixed 'need based minimum wage' after considering the capacity of the industry in an indirect manner. Therefore, I am not able to agree with Mr. Manivannan that what the Wage Board fixed as Rs. 202 is the minimum wage, but it is a 'need based minimum wage' which would be fixed only after considering the capacity of the industry.

113. The Wage Board has taken the decision that when it appeared that achieving unanimity was not possible, efforts were made to see, it under the circumstances, the labour members could agree to a reasonable minimum wage and it was ultimately possible to make them agree to a minimum wage of Rs. 202 per month for the Ports of Bombay, Calcutta and Madras and to lesser figures in respect of other Ports; but this was not acceptable to the employer members. The Board has therefore taken the decision (employer members dissenting) that the total minimum wage at Bombay, Calcutta and Madras should be Rs. 202 p.m. It has also observed at page 402—para 7.2.88:

> "The minimum wage devised by us is equally applicable to all the dock workers not only in its totality but also its components namely, basic, D.A., C.C.A., and H.R.A."

i.e., minimum basic pay is Rs. 100 p.m., D.A. Rs. 72, 10 per cent H.R.A. and 10 per cent C.C.A.

114. It is these passages that gave rise to the controversy between the parties—whether the Wage Board intended to give Rs. 202 p.m. to every docker, whether he is a registered pool worker or listed worker or an employee under the Food Corporation of India irrespective of the minimum days of guarantee in the Scheme which is still in force and being implemented in Madras Port.

115. The Scheme, the Madras Dock Workers (Regulation of Employment) Scheme is based on the Dock Workers (Regulation of Employment) Act, 1946, (U.K. Act). Even in England, after the passing of this Act and the framing of the Scheme, it was the subject matter of discussion, and investigation by various Committees from time to time to find out the defects in the working out of the Scheme by the National Dock Labour Board. The important Report that was published in 1962 was that of Viscount Rochdale Committee.

116. Viscount Rochdale, the Chairman of the Committee of Enquiry into the Major Ports of Great Britain reported that dock work has traditionally been an arduous and uncertain mode of employment. If this is still true today, it was particularly true in the past. Because of fluctuations in the demand for labour to load and unload ships, a system of casual employment was traditional in the docks and it is still substantially with us today. The evils of the system in its most rudimentary form are obvious. Where there are no permanent employer-employee relationship, there is little scope for mutual trust, loyalty and understanding to develop between the two sides. Where there is no security of employment and terms of employment have to be the subject of constant bargaining, industrial unrest and strikes are bound to flourish.

117 The Memorandum of National Joint Council which was considered as a document of first class importance by Rochdale in his report extracted that:

> "the basis of engagement for the majority of the men is still casual. The Dock Labour Scheme benefits and high average earnings do not prevent wide fluctuations and individual's earnings from week to week and wide fluctuations in earnings between the individuals".
>
> Irregularity of earnings breeds discontent, opperrrrrnism and suspicion—in short is the code, of industry's troubles".

118. The National Joint Council has accordingly decided that the time has come for a fresh and bold advance towards effective decasualisation with the object of decasualising both employment and relationship in the Industry. Viscount Rochdale recommended that the interested parties should press ahead with arrangements for the greatest possible degree of decasualisation of Dock Labour within the Dock Labour Scheme.

119. Similarly Rt. Hon. Lord Delvin in the final Report of the Committee of Enquiry concerning the Port Transport Industry observed:

> "In the dock industry only a minority of the labour force is in permanent employment They are usually employed by the week and are known either as "Perms" or as "Weekly Workers". The rest is hired as casual labour for the turn, that is by the half day from 8 A.M. to Noon or 1 P.M. to 5 P.M. Whether they are offered work will depend on the amount of work available and the demand fluctuates considerably".

120. The function of the Dock Labour Scheme is to give some sort of security and permanency to this large casual labour force. Its introduction was thus a measure of decasualisation. It did not offer the same sort of employment as is common in an industry generally, but it did eliminate some of the casual features. It did this first by setting up a Register of men and forbidding, without special permission, the employment of men not on the Register, and secondly by ensuring to a man on the Register certain minimum payments whether there was work for him or not. Any man who attends for work for the turn and for whom none is available is paid 'attendance money'.

121. Lord Delvin supported the view of the National Joint Council that the time has come for a fresh and bold advance towards effective decasualisation with the object of decasualising both employment and relationship in the industry.

122 Finally, Lord Delvin listed the things to be done for peace and efficiency in the Docks, viz., the elimination of the casual employer and of casual management, the introduction of a system of regular employment, strong and effective Trade Union leadership, the obtaining of greater mobility of labour and the revision of wage structure. Lord Delvin advised the Government to prepare and enact a Scheme for conditions of regular employment.

123. In a Book 'Hiring of Dock Workers' by Vernon H. Jensen, 1964 (Edition), the Author says:

> "There has always been romance in the coming and going of ships. A majestic ship sailing into harbour is a thrilling sight. For all of this, the shipping business has always been rough and tough, highly competitive, and vulnerable to many uncertainties whether economic or of 'wind and wave' ".
>
> * * * *
>
> "An unreliable business, it made employment insecure and casual"
>
> * * * *
>
> "In spite of the great forward steps made by the British Scheme since its establishment in the Post-War years, it has not eliminated casual employment; nor has it successfully mastered the problem of supply while dock workers enjoy payment for reporting when they are not put to work and are protected by Weekly Guarantee, for a large number of men selection for work still entails considerable uncertainty".

124. In a similar Report of the National Commission on Labour under the Chairmanship of Dr. P. B. Gajendragadkar, while dealing with Dock Workers (Regulation of Employment) Act, 1948, says:

> "The Dock Workers (Regulation of Employment) Schemes framed under the Act are broadly divided into monthly workers and reserve pool workers under the Schemes. The monthly workers are regular workers and enjoy security of employment. The other category of workers who do not enjoy this privilege are registered in a pool and employed through the Dock Labour Boards. When these schemes were first implemented, the pool workers were guaranteed minimum wages for 12 days in a month. The Boards have been given powers to increase it progressively to 21 days wages in a month. The Dock Labour Boards of Bombay, Calcutta, Madras and Cochin have increased the period of guaranteed minimum wages to 21 days in a month. They are employed by rotation to ensure equal opportunities of

employment for all the pool workers. The workers are entitled to rates of wages fixed by the various Dock Labour Boards".

125. The Royal Commission on labour appointed by the then Government of India, 1931, has recommended the decasualisation of dock workers with a view to secure as large a measure of regulating employment on the nature of the calling will allow. It is said that the aim should be first to regulate the number of Dock Labourers in accordance with the requirements and secondly to ensure that the distribution of employment depends not on the caprice of the intermediaries but on a system which, as far as possible, gives all efficient men an equal share.

126. The Government of India have passed the Dock Workers (Regulation of Employment) Act, as Act 9 of 1948. The above Act has been broadly based on the U.K. Dock Workers' (Regulation of Employment) Act, 1946.

127. Under the Act, Schemes were framed, and one such is the Madras Dock Workers' (Regulation of Employment) Scheme, 1952. The Scheme is administered by the Madras Dock Labour Board and the Administrative Body. The Administrative Body is the Stevedores Association.

128. The workers are broadly divided into the monthly and reserve pool workers. The monthly workers are those who are under the direct control of the respective employers and the reserve pool consists of workers who were working with employers as daily rated workers. Under the reserve pool also there are daily rated workers.

129. Under the Scheme these Reserve Pool Workers are entitled to wages for a minimum guaranteed days, attendance money for days on which they report, but no work is found for them. They are given rotational booking thereby giving equal opportunity of employment to all.

130. Workers who work on board the ship are called Reserve Pool Workers. The following are the categories:—

Tally Clerks,
Tindal,
Winchman,
Signalmen,
Mazdoors.

These workers are governed by the 1952 Scheme.

131. The workers who are working on Shore handle bulk cargoes like coal, phosphate, sulphur, iron ore, manganese ore, have been listed under a Scheme made in 1968. They are called Listed Dock Workers. The following are the categories of workers:

Shore Tally Clerks,
Shore Maistries,
Shore Mazdoors,
Coal Syrang,
Coal Maistries,
Coal Winchman,
Coal Signalmen,
Coal Mazdoors,
Painting Tindals,
Painting Syrang.

132. The cost of operating the Scheme is got by way of levy from employers against the labour whom they indent.

133. If more workers are indented, more levy will be forthcoming. Because of more employment opportunities, commitments by way of Attendance allowance and Minimum guaranteed wages will come down. If the employers indent less number of workers, the levy income will go down but the commitment on attendance money and minimum guaranteed wages will go up.

134. After the introduction of the 1952 Scheme, the Government of India constituted a Committee, called The Dock Workers' (Regulation of Employment) Enquiry Committee, known as "Vasist Committee" to enquire into the working of the Scheme implemented under Act 9 of 1948. The Report of this Committee says:

"The employment of dock workers all over the World has problems peculiar to itself. This is due to the fact that the port traffic is subject to wide

fluctuations which are not necessarily seasonal or otherwise cyclic, and occur daily depending inter alia, upon the number of ships entering or leaving the Port on any day, the quantity of cargo to be loaded or unloaded, the nature of cargo, and the manner in which it is received or despatched, the type of mechanical equipment and facilities available both on board ship and on shore and the rate at which the cargo can be cleared from the shore and made available to feed the ship. The demands for dock labour vary correspondingly and the employment of workers tend to be casual".

* * *

"Prior to the introduction of any Scheme for the decasualisation of dock labour, a dock worker had no security of livelihood as his day-to-day employment depended not only upon the volume of work available in the Docks but also on the whim and caprice of the employer and the middleman through whom he secured his employment".

* * *

"Decasualisation Scheme was introduced with the object 'to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work' brought in a fund of benefits for workers by confining the daily employment to registered workers only with guaranteed minimum wages and attendance allowance etc.."

* * *

"The achievement of greater regularity of employment and adequate supply of workers for the efficient performance of dock work aimed at by the Scheme is dependent upon a number of factors, such as careful initial registration of workers, periodical assessment of anticipated demands for labour and suitable adjustments in the number of registered workers in different categories etc., etc., and can result only from a judicious maintenance of a close balance between supply and average demand".

* * *

During the Enquiry, the Vasist Committee reports that the workers demanded an increased number of days from 12, originally guaranteed under the Scheme, to 18 to 26 days in a month. The reason given for the increase was that 12 days' wages are not sufficient for a month's living and the guaranteed minimum wage should be enough to provide a month's living and should not be less than Rs. 100 per mensem which has been demanded by all Central Labour Organisations in the Country. The Committee considers that the object of prescribing a minimum number of days in a month for which wages should be guaranteed cannot be put to a worker who gets occasional employment, at par in respect of wages, with another who works daily or almost daily.

* * *

"The Committee did not accept that the minimum wages which a dock worker must get irrespective of any other consideration, should not be less than Rs. 100 p.m. It was of the opinion that dock workers cannot be singled out to be entitled to any ideal minimum wages without any regard to other relevant and vital considerations. The acceptance and implementation of any ideal for the country can be taken up at the national level only and the Committee cannot arrogate to itself the responsibility to accept and apply an ideal in isolation to the Port Transport Industry only irrespective of the consequences".

* * *

But the Vasist Committee recommended that the minimum days of guarantee should be progressively raised until a guarantee of 21 days is reached. The increase, however, should definitely, be related to the quantum of total employment available in the docks and the wages which, on the basis of average employment, workers in the pool may expect.

* * *

In regard to the Weekly off, the Vasist Committee was of the opinion that it may be favourably considered by the respective Boards.

* * *

Finally the Committee was of the opinion that the greater regularity of employment and other benefits for workers can be secured largely by a watchful and humanitarian interest of the Dock Labour Board as a corporate body in which the employers have an important and responsible role and the efficient performance of dock work can mainly be achieved by the individual and collective efforts of the workers to increase productivity.

135. It is on these recommendations that the Scheme was further amended in 1956. It is this Scheme which is in force now and it is being amended from time to time by the Central Government.

136. After the amended Scheme, P. C. Chaudhuri, an I.C.S. Officer was appointed to enquire into the disparities and anomalies in the pay scales and allowances of Class III and Class IV employees of the Major Ports and to consider the question of reducing to a minimum the number of casual shore workers and the drawing up of departmental schemes for decasualisation, and to examine the disparities between the wages of permanent, temporary and casual workers and between those of shore labour and stevedore labour on time rate.

137. Mr. Chaudhuri described the nature of the work in the Docks in the following words:

"There are also the natural uncertainties accentuated by the vagaries of tide, weather, monsoons and such other conditions, associated with the movement of ships. Many of the factors which directly lead to the casual conditions in traffic are beyond the control of the Port Authorities".

* * *

While describing the Madras Port, he said "there are three categories, "A" is permanent, "B" is semipermanent while the "C" category consists of registered casuals".

138. When the Central Wage Board was set up by the Government of India to work out the wage structure for the first time, they were aware that there is the Act 9 of 1948 and also the various Schemes framed under it for Calcutta, Bombay and Madras, Madras Dock Workers (Regulation of Employment) Scheme, 1956 and for other ports. In their Report under the heading Decasualisation Schemes" page 517, para 8.56, they say:

"The port employees have been decasualised except 'B' and 'C' category workers and a few casual and badli workers. The dock workers have been decasualised, to a large extent, by the implementation of the Dock Workers (Regulation of Employment) Schemes and the Unregistered Dock Workers (Regulation of Employment) Schemes. The process of decasualisation of workers in the ports is a continuous one. New categories of workers considered to be fit for registration are being listed first and given rotational booking in order to determine the actual number of workers required for various jobs. The next stage in the process is of raising the status of listed workers to that of the registered workers. There are still some categories of workers yet to be decasualised".

* * *

8.57. "The labour members urged before the Board that all workers in the ports should be decasualised and they should be given the same facilities as are available to the registered workers".

* * *

139. The Wage Board finally decided that the issue of decasulisation of Port and Dock Workers is an issue which does not strictly fall within the purview of the Board. The Board therefore decided not to make any recommendations in this respect.

140. Rochdale in his Report says:

"The history of Dock Labour in 20th century is mainly the history of troubles in an industry with an inherently unsatisfactory base of employment and of periodic attempts to find a basic remedy in the form of decasualisation scheme".

141. On a review and a close scrutiny of all these Reports, it is very clear that the nature of the work in the dock is casual and intermittent and it cannot be

regular employment on a monthly basis at par with workers in regular establishments.

142. The Central Wage Board in their Report have stated:

"The existing practice of calculating daily wages and payments for weekly off in the various ports should continue."

Page 397.

143. Again, under the heading "Daily rated Workers" page 436—they state that the formula devised by them is only for determining the 'Revised daily rate of Wages with all its components".

144. Therefore, the Board is certainly aware that most of the workers are daily rated workers. The Board was set up only for the purpose of evolving a wage structure and to fix the minimum wage in the present conditions for dock workers so that the worker could be paid at the rate for the number of days he is working subject to the minimum guaranteed employment. The Central Wage Board was not asked to go into the question of minimum guaranteed employment.

145. Mr. Dolia, Learned Counsel, contended before me that the Central Wage Board was aware of the decasualisation Schemes and they specifically stated in their Report that they are not either interfering or tampering with the Scheme and on the other hand the Report says in Para 4.2.5. (Page 96):

"The process of decasualisation of workers in the Ports is still continuing"

"Both the registered and unregistered dock workers Schemes are being administered by the Dock Labour Board consisting of an equal number of members representing Central Government Dock Workers and the employers of Dock Workers and Shipping Companies".

146. An analysis of the decasualisation Scheme shows that it has a three-fold object—First it protects the national interest, for example by seeing that dock labour is used to the best advantage. Secondly, one of the functions of the Dock Labour Board is to act as an Instrument by which employers can do collectively what in an ordinary industry they do individually. For example, computation of wages are purely administrative. They are done by the Dock Labour Board as Agent for the employers and it is immaterial for the worker how they are done. Thirdly, the Board functions as the guarantor of fundamental rights for the dock workers. The condition that the Dock Labour Scheme must be preserved means essentially that these guarantees must be preserved. These guarantees cover the existence of the Register and its control by the Board, the allocation of labour by the Board the rights and obligations of dock worker *vis-a-vis* his operational employer, the disciplinary proceedings and the termination of employment.

147. In this whole system, the finance is the heart of the matter. Decasualisation is bound to throw an added burden of expense on the employers. The employer has to pay the minimum guarantee wages, the weekly off, disappointment money and the levy fees. Whenever there is a review of the wage structure of the industry, there should be some degree of rationalisation in order to create a more uniform level of payment. Decasualisation is bound to have repurcussion on the finances of Dock Labour Scheme. Wherever there is a change in the wage structure, there will be a marked change in the proportion of daily wages and this is bound to call for a review of respective rates of levy which will be an additional burden on the employers.

148. Recently in a case Reported in 1970—I—L.L.J. 46—Vizagapatnam Dock Labour Board *vs.* Stevedores Association, Vizagapatnam, an interesting question arose before the Supreme Court of India, whether the Dock Labour Board or the Stevedores Association, Vizagapatnam (the employers) are liable to pay the bonus to the Dockers. While dealing with this question Vaidialingam J., dealt with exhaustively the salient features of the Act and the Scheme and observed:

"It is evident that the Board is a Statutory Body charged with the duty of administering the Scheme, the object of which is to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers are available for the efficient performance of dock work. The Board is an autonomous Body, competent to determine and prescribe the wages, allowances and other conditions of services of the Dock Workers. The purport of the Scheme is that the entire body of workers should be under the control and supervision of the Board. The registered employers are allocated

monthly workers by the Administrative Body and the Administrative Body supplies whenever necessary, the labour force to the Stevedores from the Reserve Pool. The workmen who are allotted to the registered employers are to do the work under the control and supervision of the registered employers and to act under their directions The registered employers pay the wages due to the workers to the Administrative Body and the latter in turn as agent of the registered employers, pay them over to the concerned workmen... and there is no relationship of master and servant between the two".

149. The above decision would clearly establish that ultimately it is the Stevedores that have to pay the wages to the dockers and therefore the employers under the Scheme.

150. Mr. Dolia rightly pointed out to me that under the Decasualisation Scheme, it is the Stevedores whenever they have got work, i.e., to load or unload, who indent labour to the Administrative Body and get the required number of labour force to do their operational work. If the Stevedores or the employers have no work, in law you cannot compel them to pay the wages to the dockers whether on the Reserve Pool or Listed Workers, i.e., a monthly pay of Rs. 202 as suggested by the Wage Board. It is against the fundamental rights of the employers.

151. Again, under the Minimum Wages Act, the Government fixes the number of days, and the number of hours which may be all inclusive rate or basic wage plus allowance. The rate is guaranteed only on the days a worker works and when work is available.

152 Again, under the Industrial Disputes Act, an employer has got the right to 'lay off' a workman when there is no work. The employer is only required to pay 'lay off' compensation equivalent to fifty per cent of the basic wage and dearness allowance for the period of lay off except for the intervening weekly holidays.

153 Therefore, under the Act, he has got a fundamental right to 'lay off' a worker when there is no work available for him. Mr. Dolia's contention is that the Wage Board cannot over-ride the Industrial Disputes Act.

154. It has never been the intention of the Central Wage Board to ask the Stevedores or the employers to pay Rs. 202 p.m. for all the dockers irrespective of the Scheme to which he belongs and also irrespective of the fact whether the work is available or not. This is very clear from what they say at page 411:

(b) "Present practice of determining daily wages and weekly of wages, etc., should continue".

Again in the footnote (2) at page 412 they say:

'In order to ascertain the revised daily rate of basic wage, C.C.A., H.R.A., applicable to the registered pool workers corresponding to the above categories, the total quantum of basic pay, H.R.A., and C.C.A., payable to the concerned monthly workers, as stated above, should be divided by 26. In addition, the pool workers should be paid D.A., for the whole month as per present practice".

Again, at page 437, they say:

(c) "Where there is a difference between the rate of wages for weekly off holiday and leave, the same—difference should continue in future also".

155 After the acceptance of the Central Wage Board recommendations, the Central Government (Ministry of Labour, Employment and Rehabilitation) (Department of Labour and Employment) notified a Scheme under Sub-Sec. 1 of Sec. 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) called the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970, on 1st June, 1970.

Clause 34 deals with 'Guaranteed Minimum Wage'.

"The minimum number of days for which wages are guaranteed to any reserve pool worker may be fixed by the Board for each year on the basis of the monthly average employment obtained by the said worker in a reserve pool, during the preceding year in the category to which he belongs:

Provided that:

(1) the number so fixed shall not in any case be more than 21".

There is also provision for "attendance allowance", "disappointment money" and various other things.

156. If, really, the Central Wage Board recommended Rs 202 to each docker, then the Central Government would not have published the above-said Scheme in June, 1970, providing only for minimum days guarantee.

157. Again, two members of the Central Wage Board, Mr. S. R. Kulkarni, President of All India Port & Dock Workers' Federation, and Mr. Makkan Chatterji, General Secretary of the Federation, met the Managing Director of the Food Corporation of India at the Headquarters of the Food Corporation of India on the 7th August, 1970, and later presented a Charter of Demands on 28th August, 1970, in which they asked:

> "that the minimum guarantee be increased to twenty one days work or wages"
>
> "that the Attendance Allowance be enhanced to Rupees two per day".

158. If, really, the Central Wage Board, of which the above two gentlemen were members, intended to give Rs. 202 as consolidated monthly pay to all the dockers, which should also include the employees of the Food Corporation of India, they would not have demanded 21 days minimum guarantee and Rs. 2 attendance allowance.

159. Therefore, taking a comprehensive view of the whole wage structure presented by the Central Wage Board, they would never have intended to suggest or fix Rs. 202 p.m. for a docker and that they would not have intended that whether work is available or not, they should be paid Rs 202 per mensem exclusive of 4 weekly off. That would mean they are providing for 34 days in a month i.e., Rs. 202 per month of 30 days plus 4 weekly off which would amount to 34 days.

160. If, really, Rs. 202 is fixed as monthly pay to a docker they would not have said:

> "present practice of determining daily wages and weekly off wages should continue".

161. Further, the Central Wage Board could not have decided Rs. 202 p.m. quite contrary to the Act 9 of 1948 and the Schemes framed under the said Act, and contrary to the Statutory Acts such as Minimum Wages Act and Industrial Disputes Act.

162. Therefore, the Wage Board when it fixed Rs. 202 per mensem it was only notional and for the purpose of fixing the revised daily rates of wage with all its components, namely D.A., C.C.A. and H.R.A., exclusive of 4 weekly off for 26 days and leave the workers to the Schemes to which they belong for calculating their monthly pay packet with all its components for the minimum days of guarantee in a month.

163. Further, the respected Leader of the Madras Harbour Workers' Union is an experienced Labour Leader who is doing a humanitarian service, dedicating his life and sacrificing his material comforts for the noble cause of raising the standards of life of the Dockers and giving them a decent status in Society for the last four decades, has come with a honest pleading.

> that the minimum guaranteed wages for all Reserve Pool Workers is 21 days whereas it is 15 days for Listed Shore Workers and 12 days for Coal and Chipping and Painting Workers".
>
> * * * * *
>
> "The demand of the employees is to raise this minimum guarantee wages uniformly for 26 days irrespective of the category of workers. The demand was not within the purview of the Wage Board's recommendations and hence, the Wage Board has not made any recommendations specifically on this aspect".

164. But he pleaded that the minimum guaranteed 21 days for a month should be given to all Listed Workers. This demand was to equalise the number of days with that of Reserve Pool Workers.

165. He has conceded in his pleadings that the Reserve Pool Workers are daily rated workers, even though they are paid monthly.

166. He has stated that the Board while fixing the basic pay and also annual increment to basic pay has retained the character of the workers as "daily rated" workers. He understood the Wage Board's recommendations that for fixing daily revised rate of the basic pay of the worker, the worker should first be fixed on the monthly basic pay by applying the formula and then divide it by 26.

167. But he pleaded that the minimum guarantee of 26 days for a month should be given to all the Listed Workers and to the Reserve Pool Workers.

168. A Labour Leader of high integrity and having been conscious of his duties and obligations to his workers, he refrained from dealing with the 2nd Issue and confined himself to a fairly arguable point involving the 1st Issue.

169. But the other Union, the Madras Port & Dock Workers' Progressive Union is claiming that all the dockers should be provided with work for 26 days irrespective of the Scheme and the lowest category of worker in the Dock should be paid a sum of Rs. 202 per month.

170. During the course of the deliberations it was understood that in Madras Port there are various Unions, the important being I.N.T.U.C., the Communists, i.e., A.I.T.U.C. and the Praja Socialist's Hind Mazdoor Sabha. Excepting the Madras Port & Dock Workers' Progressive Union, the other Unions are not claiming or contending that all the Listed Workers should get Rs. 202 p.m. irrespective of the Schemes where only minimum days are guaranteed.

171. What the Central Wage Board has done is only to fix a notional pay of Rs. 202 for a person working for 26 days, i.e., maximum work which is available in a month, as he would be entitled to 4 weekly offs, provided he earns it.

172. The Central Wage Board having said that Rs 202 is the notional pay, they further observed, that Rs. 202 should be split up into Rs. 100 minimum basic pay, Rs 72 D.A., 16 per cent H.R.A., subject to a minimum of Rs 20 and 10 per cent C.C.A.

173. Then the next task of the Central Wage Board in the construction of the wage structure is to fix the scales of pay for each category of worker both for monthly and daily rated.

174. There would be no difficulty to fix the monthly paid worker in the new scale after working out his revised pay for the month, but the difficulty would come only in the case of employees who are daily rated worker.

175. The next stage in the wage structure is to add a notional fitment money for the purpose of giving an ad hoc increment to the existing pay. Then the Wage Board devised two formula.

(i) If the total amount after adding the appropriate fitment money is less than Rs. 229-50

$$E = \frac{(A - D) \text{ plus } 20 \times 100}{100 \text{ plus } C.}$$

(ii) If the total amount after adding the appropriate fitment money is Rs. 229-50 or more

$$E = \frac{(A - D) \times 100}{100 \text{ plus } C \text{ plus } H.}$$

"A" means total emoluments after adding the appropriate fitment money to the existing emoluments.

"D" means present dearness allowance plus Re. 1 or as per table below whichever is higher.

"C" means per cent rate of compensatory allowance for the concerned Port recommended by the Wage Board.

"H" means per cent rate of house rent allowance for the concerned Port recommended by the Wage Board.

"E" New Basic Pay.

176. After arriving at the new basic pay, it is divided by 26 to arrive at the new daily revised rate. Again this daily revised pay is multiplied by the minimum days of guarantee for each category of worker and also the D.A., H.R.A., and C.C.A. This is the pay packet according to the recommendations of the Central Wage Board.

177. Let us take the example of a Mazdoor who is getting Rs. 4.12 per day.
Existing:

Pay. Rs. 4.12×26.	Rs. 107.12
D.A.	Rs. 98.00
Interim Relief.	Rs. 11.80
Fitment.	Rs. 40.00
Total:	Rs. 256.92

The formula that is applicable in this case is:

$$E = \frac{(A-D)\times 100}{100 \text{ plus } C \text{ plus } H.}$$

$$= \frac{256.92 \text{ minus } 99\times 100}{100 \text{ plus } 16 \text{ plus } 10 = 126}$$

$$= 125.33 \text{ or } 126$$

His Scale is: 110—2.50—120—3—147

His New Pay is: Rs. 126/-

This New Pay of Rs. 126 is divided by 26 to arrive at the new revised daily wage for this category of worker.

$$\frac{126}{26} = 4.85.$$

Since he is given only 21 days minimum guarantee he will get:

Rs. $4.85\times 21 =$ Rs. 101.85

This Rs. 101.85 is his new basic pay for the minimum days guarantee as given by the Wage Board. His attendance—allowance for 5 days at Rs. 1.75 is Rs. 8.75p. New Scale of D.A. is Rs. 99, H.R.A., Rs. 20.16 and C.C.A., Rs: 12:60P: In all he will get Rs. 242.36P. Previous to the Wage Board he was getting Rs. 205.07P. Thus, there is an increase of Rs. 37.29P. It is here Mr. Chidambaram said that since the fitment of this monthly worker is Rs. 40, the difference should be Rs. 40 and because the difference falls short of Rs. 40 the condition is not satisfied. The whole premises of his arguments were based upon the assumption that they would be working for 26 days. This new pay packet contains all the components guaranteed, namely, minimum days guarantee, D.A., H.R.A., and C.C.A., in addition to his attendance allowance, disappointment money and 4 weekly offs.

178. The Central Wage Board themselves gave illustrations as per their calculations for various categories of workers in Annexure XIV on the basis of their recommendations. These calculations were based on the minimum days guarantee and not for 26 days. Illustrations are part of the recommendations. It was accepted by the Government. Mr. Dolia and Mr. G. Ramaswamy, Learned Counsel for the respective employers contend that Illustrations are part of the recommendations and its relevency and value in construing the test of the Wage Board report should not be readily rejected as repugnant to the report. The illustrations given by the Wage Board are quite consistent with the recommendations and these illustrations cannot be either modified or curtailed or expanded beyond the ambit of the recommendations. Justice Venkatarama Ayyar in Arfimus case observed:

> "It is not to be readily assumed that an illustration to a Section is repugnant and not relevant". (A.I.R. 1956 S.C. 847 at 851)
>
> * * * * * *
>
> "The utility of illustrations in interpreting the Section cannot however detract the prime importance of the language of the Section".

Lord Shaw of Dunfermline in 43 I.A. 263 observed:

> "The great usefulness of the illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working of the application of the statute, should not be thus impaired".

179. Therefore, we have to take the examples of the calculations given by the Central Wage Board in their Annexure—Annexure XIV along with their recommendations.

180. Mr. G. Ramaswamy, the Learned Counsel for the Food Corporation of India contended before me that equally the workers employed by the Corporation are neither entitled to nor can they claim that every worker should be paid Rs. 202 p.m. irrespective of their minimum days of guarantee of 18 days.

181. The employees of the Food Corporation of India belong to a separate category of workers. They are employed under the provisions of the Food Corporation Act, (Act 37 of 1964). Though they are working in the Docks, they are not governed by the Dock Workers' (Regulation of Employment) Act (9 of 1948) and the Schemes framed thereunder, The Madras Dock Workers, (Regulation of Employment) Scheme 1956. Their conditions of service and scales of pay are governed by the Food Corporation Act, 1964.

182. Before the Food Corporation came into existence, the loading and unloading of grains from the ships were handled by the Food Department of the Government of India, through the Director General of Food, assisted by the Regional Director of Food in each Port.

183. So far as the Madras Port is concerned, the Director General (Food), Ministry of Food & Agriculture, New Delhi, entered into a Memorandum of Settlement under Section 18(i) of the Industrial Disputes Act, 1947, and Rule 58 of the Industrial Disputes (Central) Rules 1957 dated 1st April, 1965 with Shri S. C. C. Anthoni Pillai, President, Transport & Dock Workers' Union, Madras, whose members are the employees of the Food Corporation of India. This agreement is Annexure I to the Counterfiled by the Food Corporation of India. This agreement came into existence during the deliberations of the Central Wage Board, appointed by the Government of India. This agreement is more or less akin to the Scheme framed under the Dock Workers' (Regulation of Employment) Act (9 of 1948). This agreement provided for various things, such as attendance money, disappointment allowance, 12 shifts in a month, piece-rate, holidays and leave. It was further provided in the agreement between the parties that this agreement was to be in force for a period of five years. It also provided under Clause 11:

> "Without prejudice to the contentions that may be urged by either party before the Wage Board, it is agreed by the parties hereto that in the event any recommendations made by the Wage Board appointed by the Government of India are accepted by the Government of India the rates of wages and benefits recommended by the said Board and accepted by the Government of India applicable to the categories of workers covered by this agreement would be substituted as if same were incorporated in this agreement and would be brought into force with effect from the date of acceptance thereof by the Government of India".

184. Within 13 months of this agreement, there was another Memorandum of Settlement between the parties under Section 18(1) of the Industrial Disputes Act, on 21st May, 1966, whereunder under clause (iv) the minimum guaranteed employment per month was increased from 12 to 16 shifts.

185. Mr. G. Ramaswamy, the Learned Counsel, graphically described the various categories of workers and how they handle the food grains as soon as a ship was berthed in the Madras Harbour. There are Head Maistries, Loaders, Fillers, Stitchers and Mazdoors. All these workmen are daily rated and they have got 18 days guaranteed minimum. Also, they have got piece-rate system and other incentives to enable them to earn more.

186. The import of food grains is gradually coming down from 2½ lakhs tons to 80,000 tons in 1970 including Fertilizers.

187. There was an agitation by the food workers on 1st September, 1969 in respect of the Dearness allowance. They were being paid only Rs. 50.50P p.m. when the other Port workers were paid more. There was a settlement between the Food Corporation of India and the Workers which was reduced to writing—Annexure IV—to the effect that the Dearness allowance should be Rs. 71 with retrospective from 1st June, 1969. In the said agreement, a clause was provided to the effect that any increase in the Dearness allowance was 'subject to adjustment in the light of the recommendations of the Wage Board for Port & Dock Workers, as may be accepted by Government".

188. The Central Wage Board's recommendations were published on 29th November, 1969, it was notified on 1st January, 1970 and it was agreed between the Central Government and the various parties that the recommendations should come into effect from 1st January, 1969.

189. Now, these Food Corporation Workers, along with the Reserve Pool and Listed Workers are claiming that the lowest category of workers should be paid Rs. 202 p.m. irrespective of the days of minimum guarantee.

190. Mr. G. Ramaswamy, contended that these workers are bound by the terms of agreement in regard to the wages and conditions of service. In Annexure I, i.e., the first settlement which came into existence during the deliberations of the Central Wage Board, there was a specific clause to the effect that any revised rate of wages and benefits recommended by the Central Wage Board should be substituted. Now, the Central Wage Board revised their daily rates of wages and other fringe benefits. Beyond that they cannot ask the Corporation to pay wages for 26 days whether work is available or not in the Port.

191. Again, in the agreement of 1966, the minimum days of guarantee was raised from 12 to 18 only.

192. After the Wage Board recommendations came into effect from 1st January, 1970 the Food Corporation Workers claim that the Corporation has to pay the minimum month wage for 26 days plus 4 weekly offs which they are entitled to. In effect, the workers are asking the Arbitrator to revise the agreement they entered into with the Food Corporation of India.

193. Mr. G. Ramaswamy, gave an illustration of a lowest category of worker who is getting Rs. 5.14 per day. This is inclusive of D.A., and Interim Relief.

His Wage for 18 days Rs. 5.14×18	Rs. 92.52
Attendance Allowance	Rs. 12.00
4 Weekly offs.	Rs. 20.56
Total:	Rs. 125.08

194. Now, the lowest category of worker claim that he should be paid Rs. 202 a month and 4 weekly off in spite of 18 days minimum guarantee. The Wage Board did not mention that the minimum of 18 days should be increased to 26 days. With considerable force, Mr. G. Ramaswamy, argued even though a worker is provided with 18 days work under the agreement the claim is "pay me for the remaining days even though I do not work for I am employed by the Corporation".

195. Mr. G. Ramaswamy, argued that the monthly payment of Rs. 202 is only notional. If the premises is notional, the result will be notional. The notional result will have to be reduced to actuality. The Wage Board themselves have exhaustively dealt with this type of workers employed by the Food Corporation of India.

196. The Wage Board was aware of their service conditions with the Food Corporation of India. The Wage Board was constituted only to evolve a Wage Structure and to see that there is an increase in the daily rates of wages.

197. The definition of "Wage" means remuneration payable in terms of money in respect of work done in his employment. The basic principle of wage has always been 'job related' even though calculated on monthly basis. In other words 'no work no wage'.

198. In 1955—2—M.L.J. 209 at 210 the Learned Judge observed that wages will be paid only for the work done. If he has not done any work, he cannot claim wages.

199. The Central Wage Board was fully aware that these workers are daily rated when they announced that they were giving Interim Relief not on monthly basis but only on daily basis.

200. The Central Wage Board did not have any intention for changing the period of employment.

201. The nature of dock work has been exhaustively dealt with by me when dealing with the Dock Workers. It is only casual, intermittent, seasonal depending daily upon the number of ships entering or leaving the port on any day.

202. Mr. G. Ramaswamy, Learned Counsel, brought to my notice the recommendations of the Wage Board in regard to the Sugar Industry. They have fixed only a minimum wage for a worker and on days he works in the factory during

the season. During the non-season, only skilled workers are entitled to a 'retaining allowance'. When this Wage Board Report came in for discussion in the Supreme Court, Their Lordships in 1969—S.C. at 671 and 674 observed.

* * *

"The real difficulty in coming to a conclusion lies in the fact that while there is no doubt on the one hand of the plight of the seasonal workmen during the off season, if they during such period remain practically un-employed, there is some force also in the argument that it is neither just nor fair to treat these unfortunate people as the special responsibility of the particular industry or the factory where they are seasonally employed. It is difficult not to agree with the opinion that the relief of unemployment by arranging suitable alternative employment or an alleviation of the distress of such seasonally unemployed persons by providing unemployment insurance benefits or by other modes is primarily the function of the Government of the Country".

* * *

203. Therefore, the principle is wages would be paid only for work done.

204. 1968—S.C. 278—Plantation Industry—In this case, the workers should work for 8 hours. A worker was incapable of doing the work for 8 hours due to physical infirmity. A stand was taken by the Union that if he comes for work on any day, he must be paid the full wage. The Supreme Court repelled this idea and declared that he should be paid only for work done.

205. Further, the claim of the employees of the Food Corporation of India is against the Fundamental Principles of the Constitution, which is "Equal Pay for Equal Work". They ask the Food Corporation to pay for the days either they were engaged or their services were utilised or their services are not at all required for want of work. Again, the Food Corporation employees who are entitled to work 18 days only in a month and get paid for the remaining days are placed at an equal par with a workman who works for 26 days and paid for 26 days. On this principle, I feel that the Food Corporation cannot be compelled to pay the last category of workers a minimum of Rs. 202 p.m. or to provide work for 26 days or pay wages for 8 days in addition to 18 days minimum, whether they do work or not and whether work is available or not.

206. The Food Corporation of India themselves filed a Statement—Ex. 1 from which it is clear that the various categories of workers do not get even the minimum days of work, and yet they are being paid for the days on which they do not work to make up 18 days guaranteed minimum. In addition to this, they will get attendance allowance etc.,

207. The claim of the Food Corporation of India employees is untenable because, long after the Wage Board recommendations, two members of the Wage Board, Mr. S. R. Kulkarni and Mr. Chatterjee, President and General Secretary of the All India Port & Dock Workers' Federation, accompanied by Mr. S.C.C. Anthoni Pillai, President, Transport & Dock Workers' Union, Madras, saw the Managing Director of the Food Corporation of India, on the 7th August, 1970. Mr. Anthoni Pillai and Mr. Makhan Chatterjee, saw the Chief Commercial Manager on the 28th August, 1970, and handed over a Charter of Demands with a forwarding letter signed by Mr. Anthoni Pillai. Clause:

(3) states that the minimum guarantee be increased to twentyone days work or wages.

(4) states that the attendance allowance be enhanced to Rupees two per day.

208. The conduct of the employees would show that even during the proceedings of the Arbitration they struck work for 15 days and again there was a settlement on 16th November, 1970 whereunder they did not claim that 26 days of work should be given or demanded that the minimum days of guarantee should be increased from 18 to 21. All that they asked was that "A" category workers attendance allowance will be Rs. 1.75 and some other benefits which are nothing to do with this.

209. All these would show certainly that the Central Wage Board never intended to give or fixed Rs. 202 p.m. to the last category of workers; nor 26 days of work should be given to them in spite of the agreement.

210. Mr. G. Ramaswamy, further represented to me that the financial aspect of the matter should be taken into consideration by me and he filed Ex. 3. showing the financial aspect. A mere look at the same would certainly show that the burden would be very heavy on the Food Corporation, especially when imports of food grains are dwindling and certainly any increase in the wages will have an impact ultimately on the consumer.

211. Equally, the Dock Labour Board and the Administrative Body filed Ex. A 7 to show that the Listed Shore Workers who handle Ore and Coal could not be provided even the minimum days of guaranteed work; as also the Painting and Chipping Workers for want of work. And yet, these workers are being paid the minimum days guarantee. In addition to the minimum days guarantee, they will be entitled to attendance allowance and other benefits. In, I agree with the contentions of Mr. Manivannan and Mr. Chilambaram, Learned Counsel for the Progressive Union, the Stevedores have to bear a burden of about Rs. 20 lakhs in a year. If such demands are upheld, it would inevitably impose a very large burden on the employers and may materially affect the industrial progress of our Country. It is necessary to emphasise that in considering the claims of the workmen sympathetically on grounds of social and economic justice, Industrial adjudication has to bear in mind the interest of National economy and progress which are relevant and material. In the present economic condition of our industries it would be inexpedient to impose the additional burden on the employers. Such an imposition may retard the progress of industrial development and production and thereby prejudicially affect the National economy. It is true that the concept of Social justice is not static and may expand with the growth and prosperity of our industry and rise in our production and national income, but as far as the present state of our National economy and general financial condition of our industry are concerned, it would be undesirable to think of introducing such an obligation on the employers to-day. As it is, by the recommendations of the Wage Board, the workmen are getting an increase of 15 per cent to 17 per cent which would be equal to that of a skilled worker. In addition, they are getting fringe benefits such as H.R.A., C.C.A., and other benefits.

212. Therefore, on the consideration of the entire materials placed before me, the demand of the workmen under the Administrative Bodies of the Dock Labour Board, Madras, and the workmen of the Food Corporation of India working in Madras Port for full wages inclusive of all components for 26 days in a month (exclusive of weekly offs and the paid haliday) is not justified as per the recommendations of the Central Wage Board for Port & Dock Workers at Major Ports. On the other hand, the Central Wage Board recommended only increased rates of wages should be paid to each category of worker for the minimum days of guarantee as per the Scheme or agreement.

213. Mr. Chidambaram, Learned Counsel for the Madras Port & Dock Workers' Progressive Union, appealed to me that even assuming that the Central Wage Board did not recommend wages for 26 days for all 'Dockers' but only for the minimum days of guarantee, atleast he is entitled to ask the Arbitrator to pay the guaranteed components such as D.A., H.R.A., and C.C.A., in full on the new basic monthly pay arrived at after applying the formula.

214. As far as the Dearness allowance is concerned, it is always either linked with pay or with the actual earnings of the worker Usually D.A., is fixed on slab according to the pay range, but in the instant case dearness allowance is calculated on the monthly pay and divided by 30 in order to arrive at the daily rate of dearness allowance and this will be multiplied by the number of actual days he works. This is the method and custom followed till now in the Dock Labour Board for daily rated worker. This system cannot be changed all on a sudden.

215. Further, the three Unions, Madras Harbour Workers' Union, Madras Port & Dock Workers' Congress and Madras Port & Dock Workers' Progressive Union, agreed to refer to arbitration the following issue:

> "Whether Dearness allowance should be included in the attendance allowance for the listed dock workers of the Madras Port and if so with effect from what date?"

216. Mr. O. Venkatachalam, Chief Labour Commissioner (Central) and Arbitrator, gave his Award on the 30th June, 1969, to the effect that dearness allowance should not be included in the attendance money for Listed Dock Workers of Madras Port. The effect of this Award seems to me that they will not receive dearness allowance on dates when they were not provided with work.

217. In these circumstances, I do not think that Mr. Chidambaram is justified in asking to pay full D.A., for all workers irrespective of the minimum days of guarantee.

218. In regard to House Rent Allowance and City Compensatory Allowance, there is much force in the appeal made by Mr. Chidambaram. The nature of the work is such that a Docker should always be available for work throughout the

month. He has to attend the call point daily and he will be informed whether work is available or not. If he is not provided with work, he will be given attendance allowance. In case he is asked to wait for 2 hours and then no work is given, he will be given disappointment allowance. If he is asked to stay for more than 2 hours, he will be given wage . Therefore, to get all these benefits he should come every day to the call point and is compelled to stay in the City. In such circumstances, it is most impracticable and illogical to split the House Rent Allowance and the City Compensatory Allowance and pay only for the days of minimum guarantee. In effect, the Dock Labour Board is splitting the H.R.A., and C.C.A., and paying only fragments. It is just and proper that so far as the H.R.A , and C C.A., are concerned, every worker must be paid in full the percentage of the newly arrived monthly basic pay after applying the formula as per the recommendations of the Wage Board

219 Therefore my finding on Issue II is:—

"That the workmen under the Administrative Bodies of the Dock Labour Board, Madras, and the Workmen of the Food Corporation of India, working in Madras Port are not entitled to call upon their employers to pay full wages inclusive of all components for 26 days in a month (exclusive of the weekly offs and the paid holiday) and that their demand is not justified".

But they are entitled to get relief as far as H.R.A., and C C.A., is concerned in full on the new monthly basic pay arrived at after applying the formula as per the Central Wage Board's recommendations.

220. Now, I will take Issue I:

viz.,

"Whether the fitment of the workmen concerned of (1) the Administrative Bodies of the Madras Dock Labour Board, and (2) the Food Corporation of India, working in the Madras Port be made as per the calculations of the concerned employers or those of the Madras Harbour Workers' Union and the Madras Port & Dock Workers' Progressive Union".

221. The word "fitment" is used by the Central Wage Board in the course of the construction of the wage structure for the first time for the Dockers in our Country. For clarity sake, I would repeat, in brief, the method adopted by the Central Wage Board to fix the wages for the Port & Dock Workers in all the Major Ports.

222. After taking into consideration all the relevant factors on a national level, which I have dealt with elaborately while discussing Issue No. II, they have decided the minimum wage for the least unskilled worker in the Madras Port should be Rs. 202/- per mensem provided he works for 26 days. In other words, the minimum wage fixed by the Central Wage Board is only notional. After fixing up the minimum wage of Rs. 202/- p.m. the Central Wage Board fixed the Revised Scales of Pay to all the category of workers. Then the Central Wage Board suggested an ad hoc increment should be added to their existing emoluments to arrive at the new monthly basic pay. In order to arrive at the new monthly basic pay, they devised two formulas, one "if the total amount after adding the appropriate fitment money is less than Rs. 229.50 p." and the other who is getting more. It is a common ground that the formula applicable to the majority of the workers concerned is the II formula, *viz.*,

$$E = \frac{(A - D) \times 100}{100 \text{ plus } C \text{ plus } H.}$$

E=New Basic Pay.

A=Total emoluments after adding the appropriate fitment money to the existing emoluments.

D=Present Dearness Allowance plus Re. 1/-.

C=City Compensatory Allowance.

H=House Rent Allowance.

223. While using the above said formula, the Harbour Workers' Union through their Secretary Mr. A. S. K. raised a dispute that the "Weekly Off" should be treated as 'existing emoluments' along with the basic wages, dearness allowance and Interim Relief. 'Weekly Off' is the day of rest for all Dock Workers in Madras Port after working for six consecutive days. Originally, these workers were not paid wages for the weekly off. When the Vasist Committee was appointed to enquire into the working of the Scheme of 1952. The Madras Dock Workers'

(Regulation of Employment) Scheme, the various Unions of the Madras Dock Workers claimed that the Weekly off should be "paid weekly off". The Vasist Committee desired that there should be a weekly off provided a worker works for six consecutive days, but recommended that the "Weekly off day" as a "Paid off day" may be favourably considered by the respective Boards.

224. Subsequently there was an agitation by the Dock Workers, which resulted in an Award by Mr. Venkatachalam that the "Weekly off" should be with wages. The Madras Dock Labour Board implemented this Award from 1-4-1966. Tr. T. K. Palaniappan, the then Chairman of the Madras Port Trust submitted a note to the Board in the following terms:

> "Sub: Payment of Dearness Allowance at higher slab to Mazdoors and Tally Clerks—Re·
>
> "*** As a result of the implementation of the Arbitrator's Award, the notional monthly wages of the various categories of Reserve Pool Workers will increase and the categories—Mazdoors and Tally Clerks will become eligible for the next higher slab of dearness allowance with effect from 1-4-1966".

Exhibit 4 of the Madras Harbour Workers' Union.

225. Again, Mr. V. Karthikeyan, Chairman of the Madras Port Trust, on 1-11-1967 submitted a note to the Board to the effect that:

* * *

> "The Weekly off wages have been regarded as part of basic pay by the Madras Port Trust as well as by other Dock Labour Boards. The Dearness allowance was also increased taking into account the fact that consequent on the grant of weekly off wages, the substantive pay of Reserve Pool Workers of certain categories had reached the next higher slab".

* * *

The Note further adds:

> "It is agreed that weekly off wages will be included for the purpose of Provident Fund calculation".

226. It is on the strength of the recommendations and the notes submitted by the successive Chairman of the Madras Port Trust that Mr. A. S. K. contends that the "weekly off" should be included in the 'existing emoluments' to arrive at the new basic pay.

227. Mr A. S. K. took a definite stand that there are two concepts, namely "total emoluments" and "fitment money" involved in arriving at the new monthly basic pay. There is no dispute in regard to 'fitment money', but in regard to the concept 'total emoluments', according to him, It would include weekly off wages besides daily wages for 26 days. Even before the Central Wage Board's recommendations, these 4 1/3rd weekly off is recognised by the successive Chairman of the Madras Port Trust as 'substantive pay'. Mr. Karthikeyan says:

> "The weekly off wages have been regarded as part of basic pay by the Madras Port Trust as well as by other Dock Labour Boards." The Dearness allowance was also increased taking into account the fact that consequent on the grant of weekly off wages, the substantive pay of Reserve Pool Workers of certain categories had reached the next higher slab."

Mr. Palaniappan says:

> "....The notional monthly wages of the various categories of Reserve Pool Workers will increase...."

228. On the other hand, the Administrative Bodies contended that the weekly off wages do not come in the calculation of the 'existing emoluments' and the fact that the weekly off wages is included for calculating the dearness allowance and for Provident Fund contribution do not affect or throw any light on the question in issue.

229. Now, it is on these contentions, I have to consider whether weekly off is an 'existing emolument' along with the basic wages, dearness allowance and Interim Relief for the purpose of arriving at "A" which is defined as "total emoluments after adding the appropriate fitment money to the existing emoluments".

230. The word "Emolument" means "Pecuniary profit", "gain" or "advantage".

231. The term "allowances" is sometimes used synonymously with "emoluments" as indirect or contingent remuneration which may or may not be earned, but which is sometimes in the nature of compensation and sometimes in the nature of reimbursement.

232. "Emolument" is more comprehensive than "salary" and includes the meaning of "gain", "profit" and "compensation".

233. In Johnson's Dictionary, "Emolument" is defined to be Profit or advantage.

234. In Roland Burrows WORDS AND PHRASES the observation of Justice Maugham is extracted:

> "There is nothing very artificial in the meaning of the word "emolument". It simply means here the advantage or benefit which the plaintiff is entitled to in virtue of his office or employment in addition to his **salary".**

235. It is common ground that weekly off is treated as holiday with wages. It is true that it is earned right. In other words, he should work for 6 consecutive days to earn the weekly off.

236. The Central Wage Board recommended in page 434—Para 7.2.120:

> "Appropriate fitment money to be added to the existing monthly emoluments, *i.e.*, basic wages, dearness allowance, additional dearness allowance, dearness pay and *other allowances*, if any, and interim relief. From the figures so arrived at, the stage of appropriate basic pay (E) should be determined by applying the formula detailed. ...."

Page 435-A—Para 7.2.121:

> "If the appropriate basic pay (E) so arrived at is a stage in the revised pay scale, the basic pay shall be fixed at the next higher stage in the revised scale...."

237. By a mere reading of these recommendations of the Central Wage Board, it would be clear that the new basic monthly pay should be arrived at by applying the formula and it is in the formula the total emoluments should be taken into consideration. What are the total emoluments is described by the Central Wage Board, namely:—

> "A" means total emoluments after adding the appropriate fitment money to the *existing* emoluments.

238. It is only after ascertaining "E", the new basic monthly pay, the Wage Board laid down the procedure to calculate the newly devised daily rate for each category of worker. Here the Wage Board observed at Page 436 under the Heading "Daily rated Workers":

> 2 (a) "....the existing emoluments for the purpose of fitment should be determined by multiplying the daily rate of basic pay by 26 and adding thereto monthly dearness allowance and interim relief, to the figure so arrived at, appropriate fitment money is to be added and then the basic pay to be determined by applying the appropriate formula."

239 It is here the Central Wage Board gave an indication that the 'Existing emoluments' for the purpose of fitment should be determined by multiplying the basic pay by 26 days. If the basic pay is multiplied by 26, the figure would be the notional pay for the month. What is the basic pay is not defined. The word "wages" is not used. 'Basic Pay' according to the Madras Dock Labour Board is not only the wages for 26 days but also 4-1|3rd weekly off wages which has been recognised by the successive Chairman of the Madras Port Trust and which is now being implemented for the purpose of calculating dearness allowance, provident fund and gratuity.

240. Mr. Dolia, the Learned Counsel stressed that the Central Wage Board in specific terms explained how to calculate the 'existing emoluments.' But, weekly off is also an 'emolument.' It is also a sort of allowance In more than one place the Wage Board themselves stated "A"—total emoluments after adding the fitment amount to the existing emoluments. Therefore, much stress cannot be laid on the solitary passage in the recommendation "that existing emoluments should be determined by multiplying the daily rate of basic pay by 26"

241. The Wage Board has only laid down the procedure for all Ports that the daily rate of basic pay should be multiplied by 26 days which is the maximum

number of days for a docker to arrive at the notional monthly basic pay. But as far as the Madras Port is concerned the notional monthly pay has already been recognised as 26 plus 4-1|3rd weekly off wages.

242. Mr. Dolia further contended that if weekly off is added to 26 days, then it should be divided by 30. Here again, I am not able to agree with him. Once again, I may repeat that it is only for purposes of arriving at the notional monthly basic pay the "weekly off" is included as "existing emoluments" or "other allowances" which has to be taken into consideration while determining "A"—the total emoluments. In any event, as far as the Madras Port is concerned, "weekly off" is regarded as part of basic pay and notional monthly wages.

243. Mr. Dolia further contended that if weekly off is included in determining the revised new monthly basic pay, he will be paid once again for "weekly off" when the revised daily rate of wage is multiplied by the number of days of guarantee and is given other fringe benefits. Here again, I must point out to Mr. Dolia that the "weekly off" is included along with 26 days wages notionally to arrive at a notional figure of monthly wages. It is only after arriving at the figure of the daily revised wages, he has to earn every "weekly off" by attending 6 consecutive days. Therefore, the question of double payment of "weekly off" will not arise.

244. Mr. Dolia further contended that the Central Wage Board in Annexure XIV gave illustrations where "weekly off" is not included. These illustrations are for Bombay, Calcutta and Visakhapatnam and Cochin. But wittingly or unwittingly they have not given an illustration in regard to the Madras Port. But Mr. Dolia pointed out to me that there is an illustration for Madras Port in regard to the Food Workers. But the Food Workers under the Food Corporation of India are not claiming their weekly off as an 'existing emolument' and it should be taken into consideration while arriving at "A". Further, the 4 1/3rd weekly off is not treated either as 'substantive pay' or as 'monthly notional pay' as was done in the case of the Madras Harbour Workers' Union by Mr. Karthikeyan and Mr. Palaniappan. Mr. Chidambaram fairly conceded that the only dispute with which his Union is concerned is only with reference to Issue II, namely that they are entitled to claim full wage for 26 days with all its components Even in the memo of calculation filed by the workmen represented by the Madras Port & Dock Workers' Progressive Union, they have deliberately omitted the 4 1/3rd weekly off since they did not treat this as "existing emoluments" or "any other allowance".

245. Therefore, on the facts placed before me, as far as the Madras Port is concerned, the "weekly off" is now treated as part of basic pay and it was recognised as a factor to be taken into consideration for the purpose of calculating the slab of D.A., Provident Fund and Gratuity. When once, the weekly off is treated as part of the basic pay, in all fairness, the weekly off in Madras is an 'existing emolument' or 'any other allowance' for the purpose of arriving at the figure "A" in the formula to be applied for arriving at the new monthly basic pay.

246. My finding in regard to Issue I:—

> "As far as the workmen concerned of the Administrative Bodies of the Madras Dock Labour Board, the fitment, in the light of the recommendations of the Central Wage Board for Port & Dock Workers at Major Ports, should be made as per the calculations made by the Madras Harbour Workers' Union".

247. The Food Corporation of India raised a dispute that in the memo of calculation made by their employees, they have adopted Rs. 71/- as D.A., instead of Rs. 50-50 p, for arriving at the new basic pay for 26 days according to the formula devised by the Central Wage Board. Mr. G. Ramaswamy, the Learned Counsel, contended that the D.A. of Rs. 50-50 p should be taken as 'existing' on 1-1-1969 in the calculation for 'existing emoluments'. It is a common case that on 1-1-1969 the employees of the Food Corporation, along with the Listed Workers under the Administrative Bodies, were getting only Rs. 50-50 p as D.A. It is also a common case that the recommendations of the Central Wage Board will be implemented from 1-1-1969.

248. It is a fact that due to agitation made by the employees of the Food Corporation their dearness allowance was increased to Rs. 71/-, the prevailing rate of D.A., to the employees of the Central Government. There was a settlement between the employees of the Food Corporation and the Food Corporation of India reached on 1-9-1969, which was reduced in writing—Annexure IV to the Counter filed by the Food Corporation—to the effect that the dearness allowance should be increased to Rs. 71/- with effect from 1-6-1969 subject to adjustment in the light of the recommendations of the Wage Board for the Port & Dock Workers.

249. Mr. G. Ramaswamy, Learned Counsel, brought to my notice that the Board was aware of the increase in the D.A., from 1st June, 1969 and that it has been agreed by the parties that the amount will be adjusted against the increase recommended by the Board and the total new emoluments including the fitment money will have to be reduced to the extent of the said increase in D.A.

(See Page 434—Note (3) of Central Wage Board Report).

250. In view of this observation made by the Central Wage Board and in view of the settlement reached with the employees of the Food Corporation on 1st September, 1969, the employees of the Food Corporation are not entitled to substitute Rs. 71 as D.A., for Rs. 50.50P, the then existing D.A., on 1st January, 1969, in the memo of calculations for arriving at the new basic pay through the formula.

251. But the Learned Counsel Mr. Chidambaram appearing for the Food Corporation Employees through the Madras Port & Dock Workers' Progressive Union, reiterated that they are entitled to treat Rs. 71 as D.A., on 1st January, 1969 when the Central Wage Board Award came into effect retrospectively from 1st January, 1969. The Central Wage Board in their final recommendations suggested Rs. 72 (Rs. 71 plus Re. 1) as the appropriate minimum D.A. Hence, the proper D.A., on 1st January, 1969 should be taken into account. In any event the Food Corporation was paying Rs. 71 as D.A. to its employees from 1st June, 1969 in pursuance of an agreement with them and they are entitled to treat the D.A. Rs. 71 as 'existing emoluments' when the Board presented its Report on 29th November, 1969.

252. Mr. Chidambaram further contended that the rule of deduction would not be applicable at all in their case as it was not the intention of the Central Wage Board to deduct or reduce the dearness allowance when they were legitimately entitled to receive the prevailing rate of D.A. as on 1st January, 1969.

253. The Learned Counsel further drew my attention to the relevant passages (Page 10—Para 2.2) in the Report to show that the intention of the Central Wage Board was to recommend only Rs. 71 as the prevailing rate of D.A. on 1st January, 1969 and even if the employees were not given actually Rs. 71 but only Rs. 50.50P on that date, they should be deemed to be getting Rs. 71 as on the date when the recommendations came into effect.

254. On the other hand, the Administrative Body for the Listed Workers has conceded the stand taken by their employees that the proper D.A. is Rs. 71 as on 1st January, 1969 which should be employed in the calculation in spite of the fact that a similar agreement was also entered into with their employees raising the D.A. from Rs. 50.50P to Rs. 71 from 1st June, 1969.

255. It is on these contentions that I have to decide whether the employees of the Food Corporation of India are within their rights, in the light of the recommendations made by the Central Wage Board, to employ Rs. 71 as existing D.A though factually on the said date they were being paid only Rs. 50.50P.

256. The Central Wage Board was constituted in 1964 to devise a wage structure for the Port & Dock Workers for the first time in our country. While the Central Wage Board was in session, Das Commission Report on Dearness Allowance was released on 1st January, 1965. The said Commission suggested that the lowest pay scales are to be neutralised by the grant of D.A. of 90 per cent of the salary. The Commission also observed that the D.A., for the pay scale range from 70 to 129 should be 90 per cent, which would come to about Rs. 71.

257. The Central Wage Board was aware of this Report and they observe, even at the inception,

> "The Board decided, that, without prejudice to the contention of either party (employers and workers) the Port and Dock Workers should get enhanced D.A. according to the recommendations of the Das Commission and in keeping with the previous practice....."

Page 10

Therefore, the Central Wage Board was of the opinion that even in 1965 the prevailing rate of D.A. for the pay scale 70 to 129 had reached Rs. 71 and therefore the employees were to get the same increase of D.A. in future as and when the Central Government granted increase in D.A. to its employees—vide Para 2.8—Page 14.

258. The monthly rated employees of the Port were paid D.A. of Rs. 71 from 1st September, 1968 as per the recommendations of the Das Commission following

the rate of D.A. of the Central Government. The Central Wage Board observed at Para 7-1-18—Page 336:

> "The Stevedores and other employers of the dock workers were opposed to making any change in the wages which they were paying to their employees and did not like any additional financial burden on them. They however said that the wage structure for their employees should be on the pattern of the wage structure for port employees".

The Das Commission Report was made applicable to all the employees of the Dock and Port Side. The Wage Board themselves made an observation at Page 438—Para 7.3.2.

> "The Central Government system of D.A. applies at present to the employees of the port authorities and dock labour boards including their administrative bodies. The rates of dearness allowance paid to these employees are, therefore, uniform at all the major ports. There is, however, no such uniformity in the rates of dearness allowance paid to the rest of the dock workers. Although a fair amount of uniformity does exist within each port in the rates of dearness allowance of the decasualised workers, such as registered and listed workers and those of the Food Corporation of India, the dearness allowance rates for similar workers differ from port to port, the dearness allowance rates of other dock workers vary from employer to employer even in the same port".

259. The Central Wage Board was therefore aware that there were some anomalies in the payment of D.A. to certain employees under the Administrative Bodies and the Food Corporation. These employees, especially the Listed Workers and the employees of the Food Corporation were getting D.A. of Rs. 50.50P on 1st January, 1969. Therefore, both the employees, i.e., the Listed Workers and the employees of the Food Corporation struck work in the Madras Harbour which resulted in an agreement with the Administrative Body—Ex. 2 filed by the Food Corporation of India and Annexure IV to the Counter of the Food Corporation of India increasing the D.A., from Rs. 50.50P to Rs. 71 from 1st June, 1969. In effect, the Administrative Body and the Food Corporation of India had to implement the Das Commission recommendations which have been accepted by the Central overnment namely that the D.A. should be increased at par with the Central Government employees. The Port Authorities had already implemented the Central rate of D.A. on the basis of the Das Commission recommendation to their employees. Therefore, both the agreements entered into between the Listed Workers and the employees of the Food Corporation and their respective employers recognised that the proper rate of D.A. should be Rs. 71 even as early as 1st September, 1968 but the parties agreed to receive the enhanced D.A. from 1st June, 1969.

260. Finally, the Central Wage Board arrived at the conclusion that the D.A. formula should be increased from Rs. 71 to Rs. 72 to make the neutralisation exact 90 per cent and altering the pay ranges, keeping in view the new basic wage structure devised by them viz., upto 139 Rs. 72 D.A., and from 140 to 179—Rs. 99 D.A.

261. Now, after going through the recommendations it is very clear that the Central Wage Board was of the opinion that the D.A. as proposed by the Das Commission should be implemented and given effect to all the workmen in the Major Ports. Even on 1st September, 1968, majority of the port workers were getting Rs. 71 as D.A. The Central Government employees were benefitted by the scale of D.A. recommended by the Das Commission. It was only after one year, the Administrative Body of the Listed Workers and the Food Corporation had to yield to the legitimate claims put forward by their respective employees to increase the D.A. from Rs. 50.50 P to Rs. 71 at par with the other employees working in the Madras Port.

262. Therefore, it was the intention of the Central Wage Board to treat the prevailing rate of D.A. as an 'existing emolument' for the purpose of using it in the devised formula to arrive at the monthly new basic pay. The Wage Board submitted their Report on 29th November, 1969. The Government announced that the recommendations will come into effect from 1st January, 1969. Agreement was reached with the Administrative Body and the Food Corporation to pay the increased D.A. with effect from 1st June, 1969, i.e, before the Report was submitted on 29th November, 1969. Therefore, the proper date should be either on 1st October, 1969, the date on which the Wage Board said that their recommendation should take effect or 29th November, 1969 when the Wage Board submitted

its Report, for it is a fair assumption that when the Wage Board speaks of 'existing' D.A. it means the date on which its Report is submitted. In any event, on 1st January, 1969 the prevailing rate of D.A. according to the Central Government employees was Rs. 71. Therefore, the existing emolument of Rs. 71 adopted by the employees of the Food Corporation as on 1st January, 1969 is in accordance with the recommendations of the Wage Board.

263. But the Learned Counsel Mr. G. Ramaswamy, pointed out that the Central Wage Board gave an illustration as to how to calculate the 'existing emoluments' of the Food Workers in Madras as on 1st January, 1969. There may be some force in the contention of Mr. G. Ramaswamy, but I cannot take the illustration alone and come to the conclusion that the Wage Board adopted Rs. 50.50P as the existing D.A. as on 1st January, 1969. I must take the illustrations along with the Report. While going through the Report, the Wage Board discussed that they were aware of the Das Commission's recommendations, which was released in 1965, that 90 per cent of the basic pay at the lowest category should be neutralised, that it was their intention that all workmen in the Port Industry should be benefitted by the increase in the D.A. and that they desired that as and when the Central Government implemented the Das Commission's recommendations to their employees, the Port & Dock Workers were to get the same benefit. The Cenral Wage Board knew that the majority of the Port & Dock Workers were paid increased D.A. even from 1st September, 1968 at par with the Central Government employees. The Central Wage Board finally recommended that while giving effect to exactly 90 per cent neutralisation as recommended by Das Commission, the existing D.A., should be increased by Re. 1, i.e. Rs. 72 instead of Rs. 71. Therefore, the illustrations in Annexure 14 should be read along with the Report for a harmonious consideration.

264. The Central Wage Board might have adopted Rs. 50-50p as the existing D.A. on 10th August 1969 when they reached the final conclusion. (Vide Page 4 of note of dissent). By that time, the increased D.A. was being paid to the Food Corporation employees in pursuance of the agreement dated 1st September 1969 from 1st June 1969. Before the Wage Board reached their conclusion, there was no agreement between the employees of the Food Corporation and their employers to increase the D.A., except the one dated 1st September 1969.

265. The Central Wage Board themselves would not have been aware or could not have expected to know when their recommendations would come into effect—either retrospectively or prospectively when they submitted their Report on 29th November 1969. But they recommended that their recommendations should take effect from 1st October 1969. The Central Government after considering the request made by the respective parties, came to the conclusion, that the Recommendations of the Wage Board should come into effect from 1st January, 1969. Therefore 1st January, 1969 happened to be a date to coincide with the fact that the employees of the Food Corporation and the Listed Workers were getting Rs. 50.50 p. as D.A. By the mere fact that they were getting D.A., Rs. 50.50 p., it should not be concluded that it is the 'existing' D.A., as on 1st January 1969.

266. While considering the existing emoluments as on 1st January, 1969, I have to understand the intention of the Members of the Wage Board and the recommendations of the Wage Board. It is clear that their intention from the very inception is that these workers should get the benefit of Das Commission's recommendations in regard to D.A. and it was their object that these workers should get the prevailing rate of D.A. after the implementation of the Das Commission recommendations by the Central Government and it was their desire that they should get D.A. along with other workers in the Port & Docks. Finally, the Wage Board recommended that since the prevailing D.A., namely Rs. 71 was not neutralised by 90 per cent, they increased it to Rs. 72 by adding Re. 1. If at all, the Wage Board gave any benefit, it is only Re 1, in the D.A. They treated Rs. 71 as existing D.A. when they finalised the Report on 29th November 1969 and they recommended to the Government that their recommendations should take effect from 1st October 1969.

267. Therefore, the contention of Mr. G. Ramaswamy, is not correct when he urged that the increase in the D.A. from Rs. 50-50p to Rs. 71 is a new emolument and this amount has to be adjusted or reduced from the total emoluments including the fitment money.

268. On the other hand, the Learned Counsel, Mr. Dolla, fairly conceded that the Administrative Body of the Listed Workers treated Rs. 71 as an 'existing emolument' as on 1st January 1969 even though they were factually getting a D.A. of Rs. 50-50p on the said date.

269. It is clear from the recommendations made by the Central Wage Board in regard to this portion of the case, that those employees who were not getting D.A. of Rs. 71 as on 1st January 1969 should be deemed to be getting the prevailing rate of D.A., namely Rs. 71 and this should be taken as 'existing D.A.' for the purpose of employing the formula to arrive at the new monthly basic pay.

270. Therefore, my finding is:

"The calculation made by the workmen concerned of the Food Corporation of India working in Madras Port represented by the Madras Port and Dock Workers' Progressive Union adopting Rs. 71 as 'existing D.A.' on 1st January 1969 for the purpose of arriving at the new monthly basic pay to fit them in the new scales of pay seems to be in consonance with the recommendations made by the Central Wage Board for Port & Dock Workers at Major Ports".

271. Therefore, my Award in the dispute between the Employers representing (1) The Administrative Body for Serve Pool Workers, Madras Dock Labour Board, Madras, (2) The Administrative Body for Listed Workers, and (3) The Food Corporation of India, Madras, and their Workmen represented by (1) Madras Harbour Workers' Union, and (2) Madras Port & Dock Workers' Progressive Union in regard to dispute I is:

As far as the workmen concerned of the Administrative Bodies of the Madras Dock Labour Board, the fitment in the light of the recommendations of the Central Wage Board for Port and Dock Workers at Major Ports, should be made as per the calculations made by the Madras Harbour Workers' Union.

AND

The calculation made by the workmen concerned of the Food Corporation of India working in Madras Port represented by the Madras Port & Dock Workers' Progressive Union adopting Rs. 71 as 'existing D.A.' on 1st January, 1969 for the purpose of arriving at the new monthly basic pay to fit them in the new scales of pay seems to be in consonance with the recommendations made by the Central Wage Board for Port & Dock Workers at Major Ports.

In regard to dispute II, my finding is:

That the demand of the workmen under the Administrative Bodies of the Dock Labour Board, Madras, and the workmen of the Food Corporation of India working in Madras Port for full wages inclusive of all components for 26 days in a month (exclusive of the weekly offs and the paid holiday) is not justified as per the recommendations of the Central Wage Board for Port & Dock Workers at Major Ports.

But they are entitled to get relief as far as H.R.A. and C.C.A., are concerned in full on the new monthly basic pay arrived at after applying the formula as per the Central Wage Board's recommendations.

272. Before I part with this Award, it is my earnest desire to record the unfailing courtesy and all the help which I received from the General Secretary of the Madras Harbour Workers' Union (Mr. A.S.K.) who presented the case on behalf of his Union and without whose help it would have been impossible to gain an insight into the complexities of the Dock Industry.

273. It gives me pleasure to see Mr. Manivannan and his colleague Mr. Chidambaram, Learned Counsels for the Madras Port & Dock Workers' Progressive Union, giving a valiant fight for the cause of the workers represented by their Union for the weak case.

274. Though it is a pleasant surprise to see Mr. Dolia an experienced and seasoned Lawyer on Labour problems appearing in the new role pleading for the Employers, he argued his case in a most detached manner using his humility, unassuming attitude and innate courtesy.

275. I thank Mr. G. Ramaswamy, Learned Counsel for presenting his case in a neat and convincing manner on behalf of the Food Corporation.

276. I take this opportunity to thank the Officials from the Administrative Bodies and the Food Corporationn of India who have been deputed to help the Arbitration Proceedings.

277. It gives me pleasure to come into contact with the Union Officials during the course of the Arbitration Proceedings and I would like to thank them for creating an atmosphere of goodwill and pleasant surroundings.

278. It is my duty to express my thanks to the Chairman of the Madras Port Trust for placing the Committee Room at my disposal for conducting the Arbitration Proceedings.

279 Lastly, I must thank Mr. M. K. Mahalingam, my Steno, for his industry and neat execution of the Award within a very short time. I must also thank Mr. I. Damodaran, Steno from the Dock Labour Board, for having supplied me with notes taken by him promptly whenever required by me.

Dated at Madras, this 10th day of February, 1971.

(Sd.) (Illegible).
Arbitrator.

[No. 74/10/70-P&D]

C. RAMDAS, Dy. Secy.

MINISTRY OF FINANCE

(Department of Banking)

New Delhi, the 18th February 1971

S.O. 1013.—Statement of the Affairs of the Reserve Bank of India, as on the 12th February, 1971

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid Up . . .	5,00,00,000	Notes	4,25,53,000
		Rupee Coin	4,18,000
Reserve Fund . . .	150,00,00,000	Small Coin	4,19,000
National Agricultural Credit (Long Term Operations) Fund . .	172,00,00,000	Bills Purchased and Discounted :—	
		(a) Internal	86,91,000
		(b) External	..
		(c) Government Treasury Bills	4,92,61,000
National Agricultural Credit (Stabilisation) Fund .	37,00,00,000	Balances Held Abroad*	89,19,10,000
National Industrial Credit (Long Term Operations) Fund . . .	95,00,00,000	Investments**	97,98,78,000
		Loans and Advances to :—	
		(i) Central Government	..
		(ii) State Governments	185,65,44,000
Deposits:—		Loans and Advances to :—	
		(i) Scheduled Commercial Banks †	394,27,15,000
(a) Government—		(ii) State Co-operative Banks ††	292,86,62,000
		(iii) Others	2,92,15,000
(i) Central Government . .	298,60,79,000		

(ii) State Governments	6,63,31,000	Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund	
b) Banks—		(a) Loans and Advances to :—	
(i) Scheduled Commercial Banks	179,16,37,000	(i) State Governments	34,16,34,000
(ii) Scheduled State Co-operative Banks	8,76,14,000	(ii) State Co-operative Banks	20,64,81,000
(iii) Non-Scheduled State Co-operative Banks	76,07,000	(iii) Central Land Mortgage Banks	..
(iv) Other Banks	32,53,000	(b) Investment in Central Land Mortgage Bank Debentures	9,59,42,000
		Loans and Advances from National Agricultural Credit (Stabilisation) Fund	
		Loans and Advances to State Co-operative Banks	4,95,43,000
		Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund	
(c) Others	77,25,73,000	(a) Loans and Advances to the Development Bank	28,03,71,000
Bills Payable	53,65,68,000	(b) Investment in bonds/debentures issued by the Development Bank	..
Other Liabilities	127,19,04,000	Other Assets	40,93,29,000
Rupees	1211,35,66,000	Rupees	1211,35,66,000

*Includes Cash, Fixed Deposits and Short-term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 226,84,50,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 17th day of February, 1971.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 12th day of February, 1971

ISSUE DEPARTMENT

LIABILITIES	Rs	Rs.	ASSETS	Rs.	Rs
Notes held in the Banking Department	4,25,53,000		Gold Coin and Bullion :—		
Notes in circulation . . .	4208,34,67,000		(a) Held in India	182,53,11,000	
			(b) Held outside India . . .	..	
Total Notes issued . . .		4212,60,20,000	Foreign Securities	278,42,00,000	
			TOTAL		460 95,11,000
			Rupee Coin		52,41,07,000
			Government of India Rupee Securities		3699,24,02,000
			Internal Bills of Exchange and other commercial paper . . .		..
TOTAL LIABILITIES . . .		4212,60,20,000	TOTAL ASSETS		4212,60,20,000

Dated the 17th day of February, 1971.

(Sd.) S. JAGANNATHAN
Governor.

[No. F. 3(3)-BC/71]
K. YESURATNAM, Under Secy.

वित्त मंत्रालय

(बैंकिंग विभाग)

नई दिल्ली, 18 फरवरी, 1971

एस० ओ० 1013.—12 फरवरी 1971 को रिज़र्व बैंक आफ इंडिया के बैंकिंग विभाग के कार्यकलाप का विवरण।

बैंकिंग विभाग

देयताएं	रुपये	आस्तियां	रुपये
चुकता पूंजी	5,00,00,000	नोट	4,25,53,000
आरक्षित निधि	150,00,00,000	रुपये का सिक्का	4,18,000
		छोटा सिक्का	4,19,000
राष्ट्रीय कृषि ऋण		खरीदे और भुनाये गये बिल :—	
(दीर्घकालीन क्रियाएं) निधि	172,00,00,000		
राष्ट्रीय कृषि ऋण		(क) देशी	86,91,000
(स्थिरीकरण) निधि	37,00,00,000	(ख) विदेशी	..
		(ग) सरकारी ख़जाना बिल	4,92,61,000
राष्ट्रीय औद्योगिक ऋण		विदेशों में रखा हुआ बकाया*	89,19,10,000
(दीर्घकालीन क्रियाएं) निधि	95,00,00,000	निवेश**	97,98,78,000
जमा-राशियां :—			
(क) सरकारी		ऋण और अग्रिम :—	
(i) केन्द्रीय सरकार	298,60,79,000	(i) केन्द्रीय सरकार को	..
(ii) राज्य सरकारें	6,63,31,000	(ii) राज्य सरकारों को@	185,65,44,000
		ऋण और अग्रिम :—	
(ख) बैंक		(i) अनुसूचित वाणिज्य बैंकों को†	394,27,15,000
(i) अनुसूचित वाणिज्य बैंक	179,16,37,000	(ii) राज्य सहकारी बैंकों को††	292,86,62,000
(ii) अनुसूचित राज्य सहकारी बैंक	8,76,14,000	(iii) दूसरों को	2,92,15,000

देयताएं	रुपये	आस्तियां	रुपये
		राष्ट्रीय कृषि ऋण (दीर्घकालीन क्रियाएं) निधि से ऋण, अग्रिम और निवेश :—	
		(क) ऋण और अग्रिम:—	
(iii) गर-अनुसूचित राज्य सहकारी बैंक .	76,07,000	(i) राज्य सरकारों को .	34,16,34,000
(iv) अन्य बैंक . . .	32,53,000	(ii) राज्य सहकारी बैंकों को .	20,64,81,000
		(iii) केन्द्रीय भूमिबन्धक बैंको को	..
(ग) अन्य	77,25,73,000	(ख) केन्द्रीय भूमिबन्धक बैंको के डिबेंचरों में निवेश	9.59,42,000
		राष्ट्रीय कृषि ऋण (स्थिरीकरण) निधि से ऋण और अग्रिम	
देय बिल	53,65,68,000	राज्य सहकारी बैंको को ऋण और अग्रिम .	4.95.43 000
		राष्ट्रीय औद्योगिक ऋण (दीर्घकालीन क्रियाएं) निधि से ऋण, अग्रिम और निवेश :—	
अन्य देयताएं .	127,19,04,000	(क) विकास बैंक को ऋण और अग्रिम . .	28,03,71,000
		(ख) विकास बैंक द्वारा जारी किये गये बांडों/डिबेंचरों मे निवेश .	
		अन्य आस्तियां	40.93,29,000
रुपये	1211,35,66,000	रुपये .	1211 35.66.000

*नकदी, अवधिक जमा और अल्पकालीन प्रतिभूतियां शामिल हैं।

**राष्ट्रीय कृषि ऋण (दीर्घकालीन क्रियाएं) निधि और राष्ट्रीय औद्योगिक ऋण (दीर्घकालीन क्रियाएं) निधि मे से किय गये निवेश शामिल नही हैं।

@राष्ट्रीय कृषि ऋण (दीर्घकालीन क्रियाएं) निधि से प्रदत्त ऋण और अग्रिम शामिल नही है, परन्तु राज्य सरकारो के अल्पावधि ओवरड्राफ्ट शामिल हैं।

†रिजर्व बैंक आफ इंडिया अधिनियम की धारा 17 (4) (ग) के अधीन अनुसूचित वाणिज्य बैंकों को मीयादी बिलों पर अग्रिम दिये गये 226,84,50,000 रुपये शामिल हैं।

††राष्ट्रीय कृषि ऋण (दीर्घकालीन क्रियाएं) निधि और राष्ट्रीय कृषि ऋण (स्थिरीकरण) निधि से प्रदत्त ऋण और अग्रिम शामिल नही हैं।

17 फरवरी, 1971

रिज़र्व बैंक आफ इंडिया अधिनियम, 1934 के अनुसरण मे फरवरी 1971 की 12 तारीख को समाप्त हुए सप्ताह के लिये तथा

इशू विभाग

देयताए	रुपये	रुपये	आस्तियां	रुपये	रुपये
बैंकिंग विभाग में रखे हुए नोट . .	4,25,53,000		सोने का सिक्का और बुलियन :– (क) भारत मे रखा हुआ	182,53,11,000	
संचलन मे नोट	4208,34,67,000		(ख) भारत के बाहर रखा हुआ .	..	
			विदेशी प्रतिभूतिया	278,42,00,000	
जारी किए गए कुल नोट		4212,60,20,000			
			जोड़ . .		460 95,11,000
			रुपया सिक्का		52,41,07,000
			भारत सरकार की रुपया प्रतिभूतिया		3699 4 02,000
			देशी विनिमय बिल और दूसरे वाणिज्य पत्र		..
कुल देयताए .		4212 60,20,000	कुल आस्तिया		4212,60,20,000

तारीख : 17 फरवरी, 1971

(ह०) एम० जगन्नाथन,
गवर्नर ।

[सं० न० 3(3)–बी० सी०/71]

के० वेंसूरत्नम, अवर-सचिव ।

(Department of Revenue and Insurance)

ORDER

STAMPS

New Delhi, the 6th March 1971

S.O. 1014.—In exercise of the powers conferred by clause (b) of sub-section 1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Governent hereby permits the Poona City Municipal Corporation to pay stamp duty hargeable on the debentures issued to the value of one hundred and eighty-even lakhs and fifty thousand rupees, at the consolidated rate of one per cent as rovided under sub-section (1) of section 8 of the said Act.

[No. 1/71-Stamp/F. No. 1/50/70-Cus. VII.]

K. SANKARARAMAN, Under Secy.

(राजस्व और बीमा विभाग)

आदेश

स्टाम्प

नई दिल्ली, 6 मार्च, 1971

एस० ओ० 1014.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा पूना नगर निगम को उक्त अधिनियम की धारा 8 के उपधारा (1) के अधीन यथाउपबन्धित एक प्रतिशत की समेकित दर पर एक सौ सत्तासी लाख और पचास हजार रुपए के मूल्य तक के सभी जारी किए गए डिबेन्चरों पर प्रभार्य स्टाम्प शुल्क संदाय करने की अनुज्ञा देती है।

[सं० 1/71—स्टाम्प/फा० सं० 1/50—सीमा शुल्क]

के० शंकर रामन, अवर सचिव।

DEPARTMENT OF COMMUNICATIONS

(P. & T. Board)

New Delhi, the 22nd February 1971

S.O. 1015.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director General, Posts and Telegraphs, hereby specifies the 16th March, 1971 the date on which the Measured Rate System will be introduced in Yeotmal Telephone Exchange, Maharashtra Circle.

[No. 5-6/71-PHB.]

D. R. BAHL,
Asstt. Director General (PHB).

संचार विभाग

(डाक-तार बोर्ड)

नई दिल्ली, 22 फरवरी 1971

एस० ओ० 1015.—स्थायी आदेश क्रम संख्या 627, दिनांक 8 मार्च, 1960 द्वारा लागु किए गए 1951 के भारतीय तार नियमों के नियम 434 के खण्ड III के पैरा (क) के अनुसार

डाक-तार महानिदेशक ने यवतमल टेलीफोन केन्द्र में 16-3-71 से प्रमापित दर प्रणाली लागू करने का निश्चय किया है।

[सं० 5-6/71-पी० एच० बी० (2)]

डी० आर० बहल,

सहायक महानिदेशक (पी० एच० बी०)।

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1971